IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION	:	MDL No. 2804
	:	Case No. 1:17-md-2804
THIS DOCUMENT RELATES TO:	:	
	:	
THIS DOCUMENT RELATES TO: TRACK THREE CASES	:	Hon. Dan A. Polster
	:	
	:	

Wednesday May 5, 2021

HIGHLY CONFIDENTIAL
SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

Remote videotaped deposition of

JAMES TSIPAKIS, conducted at the location of the witness in Naperville, Illinois, commencing at 10:09 a.m., on the above date, before Carol A. Kirk, Registered Merit Reporter, Certified Shorthand Reporter, and Notary Public.

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P R O C E E D I N G S

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THE VIDEOGRAPHER: We are now on the record.

My name is Jaclyn Duran. I am a videographer on behalf of Golkow Litigation Services.

Today's date is May 5, 2021 and the time is 10:09 a.m. This videotaped deposition is being held via remote Zoom in the matter of National Prescription Opiate Litigation. The deponent today is James Tsipakis.

All parties to the deposition are appearing remotely and have agreed to the witness being sworn in remotely. All parties are noted on the stenographic record.

The witness has been previously sworn in.

Counsel, you may proceed.

- - -

JAMES TSIPAKIS

being by me previously duly sworn, as hereinafter certified, deposes and says as follows:

CROSS-EXAMINATION (CONT'D.)

BY MR. GADDY:

Q. Good morning, Mr. Tsipakis. How are you doing?

A. Good morning. How are you?

Q. I'm doing good. Thanks.

As I told you a minute ago, Peter is in trial in West Virginia. So I'm going to finish up the last 45 minutes or so of your deposition this morning, okay?

A. Sure.

Q. I did have the opportunity to read the first part of your deposition from March. I don't intend to repeat any of that material, but I might refer to some of the things you said just to reorient us, okay?

A. Okay.

Q. Where I want to start is, one of the things that you told us in March was that threshold reports were one tool that Giant Eagle uses to monitor dispensing of controlled substances.

Do you recall that generally?

A. Yes.

Q. And you told us that your memory was that the threshold reports began to be utilized by Giant Eagle in 2013, but you couldn't remember precisely when within 2013; is that fair?

A. Yes.

- - -

(Tsipakis Deposition Exhibit 3 marked.)

- - -

BY MR. GADDY:

Q. Okay. I want to see if we can drill down into that just a little bit.

Let me show you what we'll mark as Tsipakis 3, which is P-HBC-1174, and it's going to be tab 8 in your binder.

A. So this binder, the black binder, you sent, tab 8?

Q. Yes, sir.

A. Okay.

MR. KOBRIN: I just -- while we're on the record, I don't think we received this prior to the first portion of this

deposition. There are some of the ones in your list, Jeff, that we did receive. I'm not saying they're all missing. But the first two, 1174, and the second one you identified, 1115, I don't have in my boxes.

And I don't think we also, therefore, received it even timely if the deadline would have been for this portion of the deposition, which I don't think it was.

I think it would have needed to be provided to us 48 hours before the first half of this depo, but we didn't even receive it 48 hours before this second half of the depo. But it's I think disputable pursuant to the protocol.

BY MR. GADDY:

Q. Are you with me, Mr. Tsipakis?

A. Yes, sir.

Q. Okay. You see the top of this page -- this is a one-page. It looks like it's a meeting invite.

You see at the very top of the

page it's an invite from Greg Carlson?

A. Yes.

Q. And it looks like this is dated November 11, 2013.

Do you see that?

A. Yes.

Q. And if we go down and look at the original message and we see the folks who were invited to this meeting, it looks like it was George Chunderlik, Nathan Hughes, Joseph Millward, Anthony Mollica, Shawn Voyten, and Greg Carlson.

Do you see that?

A. Yes.

Q. A couple of times in your deposition, you've referred to the compliance department or the compliance team.

Would these folks listed here in that invite be members of that compliance team or compliance department?

A. Some of them, yes.

Q. Okay. Are there additional folks who you would say are members of the compliance department or compliance team that we don't see

on here?

A. I believe these are the main -- the main folks.

Q. Okay. I know at some point in time, Jason Mullen joined the company?

A. Yes.

Q. Does that sound familiar?

A. Yes.

Q. Okay. I don't -- you can tell me if I'm wrong. I don't think he was with the company in 2013. But at some point, he joined the company and became a part of the compliance team; is that accurate?

A. Yes, I believe that is accurate.

Q. Okay. But since he wasn't with the company yet, these would be the main folks on the compliance team back in 2013, right?

A. To the best of my understanding, yes.

Q. Okay. And it looks like there were two meeting topics listed here. The first was the "Discussion of the process that has been developed for identifying pharmacies ordering excessive controlled substances."

Do you see that?

A. Yes.

Q. And do you recognize what he's talking about there or what they're intending to discuss here in November of 2013 regarding the "ordering of excessive controlled substances" would be the threshold report that you talked to us about earlier?

MR. KOBRIN: Hey, Jeff. I'm going to interpose an objection. This distribution was covered in the December 13, 2018 deposition. And pursuant to the Court's orders, these depositions in Track 3 were not to be duplicative, and this is duplicative of the distribution deposition in December of '18.

So we would ask you to move on beyond distribution and interpose this objection to this line of questioning.

BY MR. GADDY:

Q. Go ahead, Mr. Tsipakis.

A. Obviously, I wasn't there. I can only tell you what I'm reading, and certainly

what you have up on the screen is what it says. So I'm not sure what they were going to talk about or not, but I can only identify what's written.

Q. And my question is whether or not it looks like they're discussing this threshold report that you told us is used by Giant Eagle to monitor controlled substance dispensing.

Do you agree that that's what they're discussing?

A. Yeah, I follow your question, but I don't see anything listed here about a threshold report or any -- there's no topic that says "threshold report."

It just says "pharmacies ordering excessive controlled substances" is what it says, so ...

Q. Okay. Are you aware of any other processes that Giant Eagle utilized in this time period for identifying pharmacies ordering excessive controlled substances other than the threshold report?

A. As I mentioned before, we did have a system called Supplylogix that we used as

well, so ...

Q. Do you think they're talking about a Supplylogix program here, or ...

A. I couldn't tell you. I don't know.

Q. Okay. The next item says the "Discussion of the monitoring and steps to be taken when a pharmacy appears on the above list."

Do you see that?

A. Yes.

Q. Okay. Now, do you have any understanding of the threshold report that Giant Eagle used to monitor controlled substances -- controlled substance dispensing being utilized before November of 2013?

A. I don't know the exact dates of when it was -- it was an automated report and an automated process that was put in place. I don't know the exact start of it, but I don't have the exact time -- the exact date that that started.

Q. Okay. But we see here they're meeting about it in November of 2013 to talk

about the process that's been developed and the steps to take when a pharmacy appears on a list.

Do you have any reason to believe that they'd be talking about anything other than threshold report here in this November 2013 meeting?

A. I don't have -- I don't have any basis to say it is or it is not the threshold report.

Q. Okay. But your understanding of the threshold report that Giant Eagle uses to monitor controlled substance dispensing is that it generates a list of pharmacies like is being referred to in item number 2 there, correct?

A. The threshold report does list pharmacies of -- pharmacies to look at or orders to look at, yes.

- - -

(Tsipakis Deposition Exhibit 4 marked.)

- - -

BY MR. GADDY:

Q. Okay. I want to look at a couple of examples of how Giant Eagle would react to pharmacies appearing on the threshold report as

it relates to their controlled substance dispensing.

We're going to go to what we'll mark as Tsipakis Number 4, which is P-HBC-1115, which is in your tab number 6, Mr. Tsipakis.

MR. KOBRIN: Again, I just want to insert an objection. I don't think we received this prior to the deposition pursuant to the protocols in the remote deposition, a protocol that was entered by the Court and to which the parties agreed. So I think it's excludable pursuant to that protocol.

Q. Let me know when you have it, please, Mr. Tsipakis.

A. I'm sorry, Mr. Gaddy?

Q. I said let me know when you have it.

A. Oh, yes. Yes, sir, I have it.

Q. Okay. This looks like a one-page e-mail chain. And what we'll do is we'll start at the bottom of the page so we can read this chronologically, okay?

A. Okay.

Q. You see it starts down there with an e-mail from Robert McClune on December 17th of 2015.

Do you see that?

A. Yes.

Q. And I think you told us before that Bob McClune was in analytics?

A. Procurement analytics, correct, uh-huh.

Q. Okay. And the subject of this e-mail is the "Daily HBC Suspicious Purchasing Report." And then it has the date that it looks like that report was run.

Do you see that?

A. Yes.

Q. Okay. And this e-mail came out, it looks like, at 7:30 the following morning after the report was run.

Do you see that, 7:32 a.m.?

A. Yes.

Q. And it says in the body, "We have had three pharmacies exceed the purchasing thresholds for certain controlled products so far this month."

And the folks that received this e-mail looks like a lot of the same people we saw on the last meeting invite; Mr. Hughes, Mr. Carlson, Mr. Millward, and Mr. Chunderlik.

Do you see that?

A. Yes.

Q. And you recognize all those folks from the last meeting where they were talking about these types of reports that would list pharmacies that had ordered excessive amounts of controlled substances?

A. Yes.

Q. Now, a minute ago when we were looking at the last document, you said that the threshold report was an automated report.

Is it your understanding that that report would be run every day?

A. Yes, I believe every day. So on the weekends when they printed it, if it printed Saturday or Sunday, I'm not sure, but it was automated.

Q. Okay. Was it something that the computer ran on its own, or was it something that an analyst like Bob McClune would have to

go in and run?

A. There would be instances of both, but there was a standing daily report that would run on its own. It was programmed to run.

Q. Okay. Okay. Great.

So let me ask -- let me ask you this question: Outside of the threshold report, were there any other standing daily reports that were run within Giant Eagle for the purpose of monitoring controlled substance dispensing?

A. I'm sorry. Your question is automated reports or --

Q. Correct.

A. So automated reports would be -- would be this one that's listed, unless there was some reason either from loss prevention or a store if they wanted us to run something different, that would be programmed as well, but from what is listed here, it's the main -- the main report that was run every day.

I mean, there's other automated reports too, but those could be -- those weren't -- this is the regular report that ran.

Q. I think we're saying the same

thing, but I just want to make sure. And I understand that there's ad hoc reports and there's other places that you can pull different types of information.

But my question is, are there any other automated reports, meaning they run every day regardless of whether somebody asked you to or not, outside of the daily threshold report?

A. So this is the main report, yes. But then there would be additions to the report, so if there's different drugs they wanted to be added to it or classes, et cetera. So it's the main vehicle, but it doesn't mean it just stayed static.

They could add things to it or subtract things to it as well. So if there was another drug they wanted to add, right, to show up on the report or a different class or parameters, certainly that was adjusted over time.

Q. But it was all in the context of the daily threshold report, right?

A. Right.

Q. Okay. Were there any other

automated reports that ran on different frequencies, maybe weekly, monthly, quarterly, outside of the threshold report?

A. The compliance department and analysts certainly had the autonomy to run the reporting on things they wanted to look at. And I've seen examples of if they wanted to run reports on cash prescriptions or if they wanted to run reports on, you know, maybe a non-controlled drug that they wanted to look at or a controlled drug, et cetera.

So that's where tools like Supplylogix and also just other analytical queries would run, and those could run for a period of time as well, or something that was someone's job to look at that every week or every month or every quarter, so ...

Q. Okay. And, again, I understand the ad hoc reports and the reports that you can pull upon request or if you wanted to look into any particular thing. And we'll look in a minute at some of the different items that folks like Jason Mullen would look into, but my question is a little bit different.

Anything that was automated, a no questions asked, it's going to show up in your inbox no matter what every week, every month, every quarter, anything like that outside of this daily threshold report?

A. So let me try to -- so the answer is this one is the main one that ran its own, but as I mentioned, the analyst or someone that wanted to run a regular report could schedule something for their -- you know, in their inbox to run every quarter or every month, or those kind of things.

I believe we're saying the same thing, but this is not -- this is the main report, but people could add to it --

Q. Okay.

A. -- for themselves, for their own use, right, for their job description or the things that they needed, the things that they were looking at.

Like, for example, as you mentioned, the Jason Mullen, there was reports he ran and things that he had created on a cadence.

Q. Okay. So I understand that maybe an individual could design something to be sent to them if they wanted to for their particular duties, but anything at the corporate level that was designed to run -- be an automated report other than the threshold report?

A. This would be the one. Yes.

Q. Okay. So back to the e-mail, it says, "Three pharmacies exceeded the purchasing threshold for certain controlled products so far this month."

When we're talking about exceeding the threshold, is the analysis -- the threshold that is triggered here, is it the same threshold when Giant Eagle is evaluating controlled substance dispensing as it is when they're evaluating controlled substance distribution as you testified about in 2018?

A. I'm sorry.

Q. Does that make sense?

A. I'm sorry. Could you repeat that just to make sure I understand exactly the question, please.

Q. Sure. What I'm trying to do is

make sure that we're talking about the same threshold.

So in 2018, you told us that the trigger would be when a pharmacy orders more than three times the average over the previous 12 months, that that would cause a pharmacy to trigger and appear on the threshold report for evaluation of distribution related issues.

What I'm asking you here is, is that same three times the average formula the same when Giant Eagle is looking at pharmacies on this report for controlled substance dispensing issues?

MR. BARNES: Objection to the extent it misstates his December 2018 testimony.

Further object as repetitive of his December 2018 testimony, and, therefore, move to strike it.

A. So the threshold that's used, if you're asking if there's a separate threshold, it's the one that's cast over the dispensing, but it's -- as we've mentioned before in my previous testimony, orders from the warehouse to

the stores are pursuant on prescriptions for those items.

So from a logical flow perspective, the thresholds would carry through. So I'm not sure if that answers your question, but ...

Q. Maybe. And I'm cognizant of Bob's issues, and I promise I'm trying not to re-litigate the same stuff that I asked you about two or three years ago, but I'm just trying to make sure that we have a clean record that the three times threshold -- and again, that's general. We can look back at the old deposition to get the details.

But the three times threshold that we talked about in 2018 relating to distribution is the same three times threshold that Giant Eagle is looking at as it relates to dispensing issues; is that correct?

MR. BARNES: Objection to the extent you're misstating his December '18 testimony, and, further, that it's repetitive and duplicative, which you're not supposed to do in these Track 3

depositions.

A. The exact number of the threshold and what the algorithm is set at, I don't remember. I don't recall the exact number. But certainly the threshold is set at the corporate level -- at the chain level, and that's what this report flags as far as anything that would bump against that threshold, which doesn't necessarily say there's an issue, but it definitely tells us things to look at and to clear before those orders -- or before those orders go to the stores, and certainly if there's things that we want to look at from a corporate perspective and from a resource perspective.

Q. The threshold that you told us about in your distribution deposition is the same threshold that we're talking about here for dispensing; is that right?

A. I'm not -- again, I don't know what the exact number I mentioned or didn't mention, but it would be one and the same as far as the threshold.

Q. Okay. If we go back -- if we look

up at the next e-mail in the chain, it looks like Mr. Millward responds -- he writes to Darren Evans. He says, "What's going on with Store 71 and buprenorphine?"

Are you familiar with that product?

A. Yes.

Q. And that's an opioid, but it's actually an opioid that's often prescribed in the treatment context, correct?

A. Treatment -- I'm sorry? Treatment context? Can you --

Q. In the treatment context.

A. All drugs are for treatment. Treatment of -- are you saying for detox or what -- I just want to make sure I'm clear on --

Q. Yeah. Thanks. Good clarification.

It's a drug that's prescribed to treat individuals who are addicted to opioids.

A. Yes.

Q. Okay. It says, "They are way above the average for the company."

Do you see that?

A. Yes.

Q. And that goes to what you just said a moment ago that the threshold was built on a chain-wide average, not a store-specific average, correct?

A. Correct.

- - -

(Tsipakis Deposition Exhibit 5 marked.)

- - -

BY MR. GADDY:

Q. Okay. Let's turn and look, Mr. Tsipakis, now to what we'll mark as Exhibit Number 5, P-HBC-1018, which is going to be your tab number 5.

A. Okay.

Q. When you get there, if you would, turn to the back page so we can read this chronologically.

A. Okay.

Q. You see here it looks like we have another one of these automated type e-mails again from Bob McClune. Again, it goes to this group of folks from the compliance department. It's on January 15th, and it says, "We have one

pharmacy exceeding the purchase threshold for certain controlled substance products so far this month."

Do you see that?

A. Yes.

Q. And the -- in order -- the threshold that Giant Eagle is looking at is pharmacies that exceed for controlled substance dispensing purposes, it sets over at the beginning of every month, correct?

A. The exact mechanics, as I testified before, would be how the mechanics work. But, yes, I think it resets for the following month. The exact date and how that does it, I'm not -- I'm not familiar with it at this moment, but it does reset.

Q. Okay. But on the 15th is when this report goes out.

Let's turn the page and look at the response from Mr. Millward.

And he says, "Store 54 and, to a lesser extent, 2402 are increasing in buprenorphine products on a daily basis. Jason was able to pull some data together that is

potentially concerning."

Do you see that?

A. Yes.

Q. Again, we're seeing this is related to buprenorphine products, which we know is an opioid, but is one that is often prescribed to folks being treated for OUD, or opioid use disorder, correct?

A. One of these is, yes.

Q. It goes on to say, "The store did not exceed the purchase threshold last month. This is a new trend at the Somerset stores. I need you to intercede with the store to find out what they perceive to be the trend."

Do you see that?

A. Yes.

Q. In the next paragraph, he says, "Some research shows that the Rx" -- the scripts -- "are coming from prescribers who are being investigated based on news articles."

Do you see that?

A. Yes.

Q. How does -- if at all, how does Giant Eagle communicate to its pharmacists that

they may be filling prescriptions for doctors who are being investigated?

A. Well, certainly, as I've testified before, we have a very robust loss prevention department. And certainly our head of our loss prevention is very well established with local law enforcement, DEA, FBI as well.

So, certainly, we have a really good program where there's information that is shared amongst the agencies on ongoing investigations. There are certainly things for us to look at and things we help them with.

So from reading -- all I can tell is from what I'm reading here is what Joseph Millward has said something about news articles. But as far as what investigations or what he's using to base that, I couldn't tell you, but I'm just reading what it says.

Q. Okay. Well, the compliance department, it looks like, has looked into this and determined that this pharmacy, this Giant Eagle pharmacy, is filling prescriptions for opioids for prescribers who are being investigated.

That's what they've determined here so far, right?

A. That's what it says, yes.

Q. Okay. You agree that that's a red flag, that pharmacists should be on the lookout for a prescriber who's being investigated?

A. Certainly it's a data point to consider, sure.

Q. It goes on to say -- it says, "The Rxs are coming from prescribers who are being investigated, based on news article, and plastic surgeons."

Do you see that?

A. Yes.

Q. Okay. While a plastic surgeon may prescribe an opioid after a medical procedure, do you agree that it would be a red flag for a plastic surgeon to be prescribing opioid use disorder treatment drugs?

MR. BARNES: Objection; calls for a medical opinion. He's not here as an expert, in any event.

But go ahead and answer, Jim.

A. Certainly a plastic surgeon is a

fully authorized physician, M.D., that can -- that has legal rights to write for prescriptions. And certainly if they have a DEA license for that drug that they're dispensing in that particular class, they have authority to prescribe those medications as they see being fit in their professional judgment.

Q. My question is a little bit different.

Do you agree that it would be a red flag for a plastic surgeon to be writing prescriptions for opioid treatment drugs?

A. It would be something to consider, yes.

Q. Okay. And then it goes on to say, "for other prescribers who may be outside of their normal course of professional practice."

Do you see that?

A. Yes.

Q. Then it says, "Some of the prescribers are from outside of the normal service area for the stores."

Do you see that?

A. Yes.

Q. Do you agree that that is also a red flag, filling prescriptions for doctors who are outside of the normal service area of the store?

A. It's a data point to consider, yes.

Q. But despite all these red flags, you agree that these prescriptions were getting filled?

A. I can't ascertain if they got filled or didn't fill. Certainly I can read the dialogue here that is stating that they were filled and certainly the correspondence between the individuals on this e-mail string, but that's what they're suggesting, yes.

Q. Okay. Well, what we know is that they were at least using enough of this product that they were flagging on Giant Eagle's three times threshold report by the 15th of the month, correct?

A. What I ascertain from this string is that there was -- the month before, these drugs did not show up on a flag for these stores. The following month they did, which

would mean that there was a change in prescribing habits, which changed dispensing habits from our side, which then shows us picking that up and investigating that trend.

Q. And Mr. Millward goes on to say, "I suggest that we shut off the buprenorphine products to the two stores," and he underlines that.

Do you see that?

A. Yes.

Q. And what's happening here is the compliance department -- based on these prescriptions being filled with the red flags the compliance department saw, that they made the decision that they wouldn't even ship any more of this product to the store, correct?

A. What I see is they suggest that they stop shipping this product to the stores until they have a chance to look at it further and investigate further.

Q. Okay. Well, he doesn't really say "investigate." He says, "Until you have a chance to visit, investigate, and retrain the team members on the controlled substance

dispensing guidelines and red flags."

Do you see that?

A. Yes.

Q. And if you look up at the next -- well, sorry. Let's read the next sentence.

He says, "We'll then evaluate your findings and determine if the pattern is suspicious and if the DEA should be notified."

Do you see that?

A. Yes.

Q. Do you know whether or not the DEA was notified about this?

A. I do not.

Q. Okay. If we go up to the next e-mail in the chain, it looks like two minutes later, from 12:53 from the one we were just looking at to 12:55, Mr. Millward then sends an e-mail blocking buprenorphine products from those pharmacies.

Do you see that?

A. I do, yes.

Q. If you go to the first page of the document and start at the bottom. It looks like here Mr. Evans forwards this e-mail chain to the

pharmacist at Stores 54 and 2402.

Do you see that?

A. Yes.

Q. Okay.

MR. BARNES: Hey, Jeff. I'm going to interpose an objection. I don't see any evidence that this has anything to do with any of the drugs at issue in the case or Lake and Trumbull County.

Can you clarify that?

BY MR. GADDY:

Q. Go up to the next e-mail, please, Mr. Tsipakis. And you see that one of the pharmacists writes back, and he says, "Hi, Darren. We are now getting all of Medicine Shoppe's scripts. Just got off the phone to confirm that they are no longer stocking at all. We've had so many calls on this product."

Do you see that?

MR. BARNES: Same objection; irrelevant, outside the jurisdictions at issue, and does not involve any of the drugs at issue in the case.

Q. Do you see that, Mr. Tsipakis?

A. I'm sorry. Can you just -- yes, I see that. Yep.

Q. Okay. And if we go up to the next e-mail in the chain, it looks like Mr. Millward again writes -- and takes off the pharmacist, but just writes to his compliance team.

Do you see that in the "to" line, in the "CC" line?

MR. BARNES: Same objections.

A. The compliance team and the loss prevention team.

Q. Correct. He says, "Darren, why is the Medicine Shoppe refusing to fill these prescriptions? Do they believe the prescriptions are not legitimate to fill? What is the store documenting on the image notes or hard copies as evidence of their due diligence on the legitimacy of the prescriptions?"

Do you see that?

A. Yes.

Q. He then goes on to say, "They seem to be laced with red flags."

Right?

A. Yes.

Q. And we've already looked at some of those flags. Doctors being investigated, correct?

A. What was written before, yes.

Q. Filling for doctors without a specialty that was relevant to the treatment drugs being dispensed?

MR. BARNES: Same objections.

Q. Correct, Mr. Tsipakis?

A. Certainly I can see what was written on -- what was written in the e-mail, yes. As far as -- I'm not the pharmacist there that was filling the prescriptions, so I can't comment on what they were looking at and what they were filling and what information they had.

Q. And they were also filling for doctors outside of the area according to this, correct?

MR. BARNES: Same objections.

Same objections.

A. Whether they filled there or didn't fill, I don't have -- I can't answer that. I can only answer what's in this e-mail string.

Q. Okay. Well, Mr. Tsipakis, you agree it would not be a good thing for Giant Eagle pharmacists to be filling controlled substance prescriptions that are laced with red flags?

MR. BARNES: Same objection.

A. A pharmacist, if they're -- if they're confronted with prescriptions that have red flags, they have a duty and a corresponding responsibility to clear those red flags and to be comfortable with those red flags, and either they'll make a decision to proceed or not proceed on filling those prescriptions. It's what they do every day.

Q. Okay. But if they're filling prescriptions that are laced with red flags, you'll agree that's not a good thing?

MR. BARNES: Objection; misstates not only his testimony but this document.

A. The pharmacists in their professional judgment would get a prescription, do their diligence on that prescription, and if there's anything that they feel is a red flag

concerning that prescription, they would proceed accordingly to their professional judgment.

Q. Yes or no, Mr. Tsipakis. Should they be filling prescriptions laced with red flags or not?

MR. BARNES: Objection; asked and answered twice.

You can try it one more time, Jim. If your answer is the same, you can just say it's the same answer.

A. So if a pharmacist has a prescription and they determine there's a red flag, if they filled the prescription, there would be no more red flag. They would have cleared the red flag. Otherwise, they wouldn't have filled the prescription.

- - -

(Tsipakis Deposition Exhibit 6 marked.)

- - -

BY MR. GADDY:

Q. Let's look at what we'll mark as Exhibit Number 6, P-HBC-1017. It's going to be tab number 4 in your binder.

And this is going to be the

same -- not the same, but similar e-mail chain.

If we go to the bottom of the second page, you'll see the e-mail from Millward that we already looked. And I just want to show you Jason's response.

So look at the bottom of page --

A. Is that the bottom --

Q. I'm sorry?

A. I'm sorry. Tab 4, right? Tab 4.

Q. Correct. And then look at the bottom of page 2, and you'll see the Millward e-mail that we looked at just a moment ago.

I just want you to orient yourself real quick.

A. Yeah. Thank you. Just give me one minute just to read from the back here just so I get my chronological order here, so ...

Okay. I'm sorry. Page -- the second page bottom was the same e-mail. Okay. I see that.

Q. Okay. Now, let's flip to the first page and look at Jason's response and his analysis, okay?

A. I'm sorry. First page, right?

Q. Yep. Middle of the page, the e-mail from Jason Mullen.

Do you see that?

A. On Friday, January 15th?

Q. Yes, sir.

A. Okay. Yep, I have it. Let me just read that.

That's what you want me to read, correct?

Q. We're going to read it together.

A. Oh, okay.

Q. He says, "I apologize for the lengthy e-mail. Below is my analysis and the attached spreadsheet goes in more depth on the actual data." He says, "14 docs have prescribed since the beginning of December, and three of the doctors, Clark, El-Attrache and Harika, previously had their medical license sanctioned by the state."

Do you see that?

A. Yes.

Q. You agree that would be a red flag for the pharmacist to look into, correct?

MR. BARNES: Objection. We are

continuing on with an incident involving none of the drugs at issue, involving neither jurisdiction at issue. So we object and move to strike any testimony related to this.

Q. Go ahead, Mr. Tsipakis.

A. Could you repeat your question?

Q. You'll agree the fact that three of the doctors that these pharmacies were filling prescriptions for, the fact that they had their medical license sanctioned by the state should be a red flag that the pharmacist should look into a little bit further?

A. If they're aware of those, yes.

Q. Well, it's something that they should have the ability to become aware of, right, when they're filling controlled substance prescriptions?

A. Well, I guess I'm trying to understand the question.

So if someone is sanctioned, depending on what they got sanctioned for, I mean, they're still a legally authorized practitioner to prescribe medication. If there

was -- if they were sanctioned for something egregious involving their ability to prescribe prescriptions, they wouldn't be able to prescribe prescriptions.

Q. Well, Mr. Tsipakis, it was important enough that Giant Eagle's compliance department made a note of it when they were investigating these prescriptions that caused these pharmacies to pop on the threshold report, right?

A. All I can read here is that certainly from Mr. Mullen, he mentions that they were previously sanctioned. I don't know what they were sanctioned for. I can't make the determination of the materiality of their sanction. All I know is what he has stated here, the "previously had their medical license sanctioned."

Q. Okay. So you'll agree that's why it would be a red flag that you would want your pharmacist to look into a little bit further before just filling this prescription for a controlled substance, right?

MR. BARNES: Objection; asked and

answered already.

Q. Right, Mr. Tsipakis?

A. Sure.

MR. BARNES: Same objection.

Q. Okay. It says, "The other doctor, Teet, is being criminally prosecuted for witness tampering and falsification of records in a DEA investigation about his buprenorphine prescribing habits."

Do you see that?

A. Yes.

Q. Okay. I would assume that's a little bit easier for you. That's definitely a red flag, right?

MR. BARNES: Same objections.

A. Yeah.

Q. Mr. Tsipakis?

A. Yes. It's certainly a data point to consider, yes.

Q. Okay. It goes on to say that this Dr. Teet is predominantly practicing as a plastic surgeon. And you already told us that that would be a red flag to look into, the fact that a plastic surgeon is writing prescriptions

for drugs used to treat opioid use disorder?

MR. BARNES: Objection; misstates his prior testimony. That's not what he said.

Q. Is that right, Mr. Tsipakis?

A. Again, what I'm reading here, it's saying Dr. Teet is predominantly practicing as a plastic surgeon. This is from Jason Mullen.

Again, he's a medical physician with sanctioned authority to treat patients and to prescribe medication, and -- I guess I don't understand the particular question.

Q. I'm asking you whether or not it should be a red flag that you have a plastic surgeon writing prescriptions for drugs that are used to treat people with opioid use disorders, whether or not that's something that you would want your pharmacists at Giant Eagle to look into a little bit further?

MR. BARNES: Objection; asked and answered.

A. Sure. It's a data point they should look at and consider. If they're presented with it and they have it, of course,

sure.

Q. Okay. Below that, Jason notes, "Additional findings of note."

On the second bullet point there, he says, "Several patients reside at the same address."

Do you see that?

A. I'm sorry. I was under the line, "The analysis with a date range to present" -- I'm sorry. Are you further down or -- oh, okay.

Q. It's highlighted on the screen in front you, too, if you want to look at that.

A. Oh, okay. Yep. Thank you. So it's the paragraph below. Okay. "Additional findings of note."

Q. You see, "Several patients reside at the same address"?

A. Yes.

Q. Okay. You'll agree that that's a red flag that a pharmacist should look into further?

A. Yes.

Q. And then it says, "Three practitioners." And it lists them there --

represent almost 60 percent of the buprenorphine business at the one pharmacy.

Do you see that?

A. Yes.

Q. Do you agree that when you have doctors writing such a high volume of controlled substances, that that's a red flag that you would want your pharmacists to look into a little further?

MR. BARNES: Same objections.

A. I mean, they would become familiar and you would know that. But, sure, yes, it's a data point to consider.

Q. If you go to the last section, it says, "Based off analysis for Store 54."

Do you see that?

A. Yes.

Q. Do you see it's looking at the types of payment?

And it says in the first bullet point, "24 patients have paid cash." And the second bullet point, "22 patients have used third-party payments or insurance."

Do you see that?

A. Yes.

Q. And do you agree the fact that over half of the prescriptions are being paid for in cash is yet another red flag that you would want your pharmacists to look out for and do a little bit more investigation before filling these prescriptions for opioids that are being paid for in cash?

MR. BARNES: Same objections.

A. Certainly a data point to consider, yes.

Q. If we turn to the next page, they talk a little bit about the distance. And they show that as far as the distance between the pharmacy and the doctor, it's as high as 82 miles away and an average distance of about 45 miles away.

Do you see that?

A. Yes.

Q. Again, do you agree those are red flags that you would want your pharmacists to look into and investigate a little bit further before they fill these prescriptions?

MR. BARNES: Same objections.

Q. I'm sorry. Mr. Tsipakis, if you answered -- y'all are speaking over each other.

A. Yes.

Q. Okay.

A. A data point to consider. Yes.

Q. Okay. And then in the next two blocks, you see the distance between the patient and the pharmacy was as high as 30 miles, average of 13.5, and distance from the patient to the doctor is as high as 81 miles, an average of almost 50 miles.

You'll agree that those are also red flags that you would want your pharmacists to look into before filling these prescriptions?

MR. BARNES: Same objections.

A. Certainly data points to consider.

Q. Now, when Mr. Millward said in the last e-mail that these prescriptions looked like they were laced with red flags, that was before he had a lot of this additional information about the percentage of cash payments and the specific distances that patients were traveling to see these doctors and to get to these pharmacists, correct?

A. I'm sorry. The question was, was this e-mail after his e-mail before? Yes. It was exact -- I'm just trying to see the time if it's the same day or next day, but ...

I believe it was after, yes.

Q. Now, where is Jason able to pull this type of information from?

MR. BARNES: Jeff, I'm showing the 45 minutes have lapsed.

Can we get a confirmation of that from the videographer?

THE VIDEOGRAPHER: Yeah, it just started, 45 minutes.

MR. BARNES: He just hit it? Okay.

We have a redirect examination I'd like to move into.

MR. KOBRIN: Bob?

MR. BARNES: Yeah?

MR. KOBRIN: Hold on one sec. I just want to -- we don't need to take a break or anything, but I do want to just quickly -- I'm just going to give you a call, if I can, about documents we might

want.

We can all stay on if we want.

I'm just going to leave my office for a second.

MR. BARNES: Let's take a five-minute break in between the end of the direct and my cross, okay?

Off the record for five minutes.

THE VIDEOGRAPHER: The time is 10:55 a.m.

Off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 11:10 a.m.

Back on the record.

- - -

REDIRECT EXAMINATION

BY MR. BARNES:

Q. Good afternoon, Mr. Tsipakis.

A. Good afternoon.

Q. As you know, I'm Robert Barnes. I represent Giant Eagle.

You were deposed by Peter Mougey back on March 17th of 2021 and today by Jeff

Gaddy.

I have some follow-up questions from both depositions since we didn't have an opportunity to question you back in March. So some of the stuff, we haven't heard today, but since this is a continuance of March, it's fair game to go into.

Do you recall being asked a lot of questions about Giant Eagle's controlled substance dispensing guidelines which was Exhibit 1 to your prior deposition?

A. Yes.

Q. And do you have those exhibits nearby from the prior deposition? There were only two exhibits. One was the dispensing guidelines, and one was an unpublished controlled substance manual.

Do you remember those?

A. Yes. I have them.

Q. Okay. Now, with respect to the guidelines, one portion of the guidelines that was not covered in your last deposition was on page 4 called "Giant Eagle's Promise of Support." And it begins, "Giant Eagle supports

the professional judgment of each pharmacy team member."

Do you see that?

A. Yes.

Q. What is the significance of that portion of the guidelines?

A. The significance is that Giant Eagle as a corporation stands behind the professional judgment of our pharmacists, and we act ready to give them not only the support but whatever resources they need to do their job.

Q. It says, "Giant Eagle will support the decision of the pharmacist."

Whatever -- does that mean that Giant Eagle will support whatever decision the pharmacist comes to after they exercise whatever due diligence they deem appropriate and decide to fill or not fill the prescription?

A. Yes.

MR. GADDY: Objection to form.

Q. So either way, Giant Eagle is going to support the professional judgment of the pharmacists, fill or not fill?

A. Yes.

Q. And are you aware of circumstances in which Giant Eagle pharmacists have refused to fill prescriptions?

A. Yes, absolutely.

Q. Does that happen on a regular basis?

MR. GADDY: Objection to form.

A. It happens, yes.

Q. Okay. But why would a pharmacist care if the company that employs him or her is going to be supportive of their decision?

I mean, why care one way or the other?

A. It's important --

MR. GADDY: Objection to form.

A. It's important for the pharmacist to know that they're allowed to practice and to make decisions based on their professional judgment and they'll have support from their company. And if they don't feel comfortable filling a prescription, then the company will support that decision and not force them to fill a prescription or to coerce them to fill a prescription. It's 100 percent support of their

judgment.

Q. And you're a professional pharmacist; is that correct?

A. Yes.

Q. And you actually have experience filling prescriptions in stores?

A. Many years. Yes.

Q. Okay. And can you tell us, in terms of looking at a prescription in hindsight, is it possible to look at the data only and determine whether the pharmacist made a good or bad judgment?

A. It's impossible to do that retrospectively. When you're the pharmacist at the counter, you're using your judgment. You have the data points and circumstances in front of you. You have the patient in front you. You have the physician interactions. There's a whole plethora of data points that are used to either fill or not fill a prescription.

And just by looking at the data, it would be impossible to second-guess or come to a conclusion one way or the other if you weren't there.

Q. Okay. And are you aware of any organization, say, for example, PDMP programs, including OARRS, suggesting or requiring that pharmacies identify and apply red flags to prescriptions?

A. Requiring, no.

Q. Okay. Now, you were asked a lot of questions in both your prior March deposition and today about red flags.

Can you clarify for the record what in your experience as a professional pharmacist -- what does the term "red flag" mean to you?

And more specifically, what does it mean in terms of whether or not it is any indication of whether or not a prescription is legitimate or not legitimate?

A. Sure. A red flag is certainly something to consider when you're filling a prescription. A red flag could be a lot of the things that we discussed, but certainly a red flag could be dosage that's out of the ordinary. A patient's age contraindication, an OTC indication. A red flag is not only about

suspicious activity, it's also about a clinical red flag.

So a red flag to me is a piece of information that's important, when you're about to fill a prescription and counsel a patient on a particular medication and therapy, to take all that into consideration and then come to a conclusion on either to fill a prescription or how to counsel a patient or how to watch a patient for continual support in therapy, et cetera.

Q. All right. Is the filling of a prescription -- is that -- do you consider that a health care decision?

MR. GADDY: Objection to form.

A. Could you either repeat the question or -- it would help, please.

Q. Sure, sure. Do you consider your role as a professional pharmacist to be part of a health care -- part of our health care system? Are you a health care professional?

A. Yes, absolutely.

MR. GADDY: Form.

Q. And so when filling a

prescription, is it in your mind part of the -- is it a health care determination as to whether or not this patient should get this medication at this point in time?

MR. GADDY: Objection to form.

A. So from a pharmacist's perspective and a pharmacy perspective, we're not diagnosticians. We don't have the education or training to diagnose. So our role is not to second-guess whether a prescription is the proper medical prescription for a patient or not.

Our role is to make sure the -- from a therapy that has been prescribed by a licensed practitioner, to be checking for drug interactions, to be checking for the DURs that we do, to check for legitimacy of a prescription being issued by a licensed and authorized prescriber, and then also helping the patient, counseling the patient on how to use that medication, side effects of the medication.

So the fact that our training and also limited information that we have at the pharmacy counter, we're not diagnosticians and

doing anything with the diagnosis of the patient. That's the physician's primary -- or whoever the practitioner is who treated the patient's responsibility.

Q. Is the pharmacist supposed to make any medical judgment in filling a prescription?

MR. GADDY: Objection to form.

A. Medical judgment, no.

Q. And is that because you have no medical training in terms of medical school, residencies, all the things that doctors do?

A. Yes. We're not equipped to make those type of decisions, and not authorized to prescribe either.

Q. I see. But doctors, they're licensed to prescribe medications for their patients; is that correct?

A. Correct. And trained to as well, yes.

Q. And you were asked some questions earlier by Mr. Gaddy about doctors being suspended or investigated.

Have you ever been trained or advised that the fact that a doctor is being

investigated means that he cannot issue a prescription?

A. No, just because they're being investigated -- unless their -- unless their prescribing powers or ability to prescribe medications either from the medical board or from the DEA are taken away, they are authorized to write prescriptions and to effectuate prescriptions.

Q. Does the pharmacist or the pharmacy have any ability to revoke or suspend a doctor's license to prescribe?

A. Absolutely not.

Q. Getting back to this whole idea of red flags, are you aware of any state regulations that list or require the application of red flags in the dispensing process?

A. No.

Q. To your knowledge, has the Ohio Board of Pharmacy ever issued regulations that said, "Here are the red flags that you must follow when filling a prescription"?

A. No.

Q. Why do pharmacists even use the

term "red flags" if it's not in state regulations or in DEA regulations?

A. They're used as things to look for, data points. Certainly through pharmacists' training, continuing education, et cetera, there's things that come up that are good to know and certainly to reinforce from a practical and a training perspective. But, again, it comes to the pharmacist's professional judgment on the prescription dispensing process.

Q. And do pharmacists in the exercise of their professional judgment in filling prescriptions sometimes dispense medications even if there had been a red flag?

A. Absolutely. Yes.

Q. And why is that? Why wouldn't a pharmacist just say, "I'm not filling your prescription because, for example, you drove 36 miles, and I think that's too far"?

A. It would be irresponsible and dangerous for pharmacists to just blanket not fill prescriptions. Obviously they were issued from a medical practitioner that in their judgment believed that this patient needs this

medication for treatment and therapy.

And for us to just make a blanket determination, that would be very dangerous to the patient and certainly to the care of that patient.

Instead, our -- the expectation will be for the pharmacist to have whatever they need to look at for that particular prescription, any red flag, whether it be distance or something else, to clear those red flags or to understand those red flags or discuss any concerns with the prescriber or patient or certainly a family member, whatever needs to happen before they dispense that prescription to make it not a red flag anymore for that -- for that prescription or certainly that pharmacist.

Q. Can you tell whether or not in hindsight by looking at data if a prescription is legitimate or not?

MR. GADDY: Asked and answered.

A. No.

Q. With respect to how pharmacists go about clearing red flags and specifically with

respect to documenting what they did with red flags, are you aware of any requirement either in the state or the federal regulations that requires a pharmacist to write anything down when filling a prescription and clearing red flags?

A. There is no such requirement. No.

Q. Why do pharmacists sometimes write things down then?

A. It's the pharmacist's discretion on whether they need to document, whether they need to communicate to another pharmacist, whether they need to put something on the prescription for insurance purposes or other reasons, so certainly it depends.

Pharmacists have that discretion and judgment on when they would need to document something or if it wasn't important to document or needed to be documented.

Q. To your knowledge, has the DEA or the Ohio Board of Pharmacy ever advised Giant Eagle that it had to write anything down with respect to its pharmacists' due diligence?

A. No, never.

Q. And are Giant Eagle pharmacists and their stores in regular and constant contact with the Board of Pharmacy and their investigators and agents?

A. Yes.

MR. GADDY: Objection to form.

A. Yes, often.

Q. In what way? Can you describe the ways in which Giant Eagle and its employees and pharmacists are in such contact, constant contact, with the Board of Pharmacy.

A. Sure. Absolutely.

We have regular inspections that the state and certainly the DEA do with our stores; some announced, some unannounced. We also have Ohio regulations on if there's concerns around a controlled substance or loss of a controlled substance, we need to notify the board.

As part of investigations, folks from the board or DEA may come in to get information from us or ask us questions.

Also, as mentioned earlier and testified earlier, we have a very robust loss

prevention department lead by Rick Shaheen, who has long-standing relationships with the Attorney General, DEA, FBI from his previous employ.

So there's a lot of conversations between him and the Board of Pharmacy, him and our stores. So it's a constant open communication amongst law enforcement, our pharmacists, and our corporate resources.

Q. All right. Going back to the Giant Eagle dispensing guidelines, these were issued I believe in 2013 I think was your prior testimony.

Do you recall that?

A. Yes, that's correct.

Q. The fact that they were issued -- there's a date on the bottom. This is Exhibit 1, "Created 7/22/2013." Would I be correct or incorrect if I read that to mean that Giant Eagle had no dispensing guidelines before these written guidelines were issued in July of '13?

A. That would be incorrect.

Q. What did Giant Eagle have before

these 2013 guidelines were issued, either written or unwritten?

A. Certainly the pharmacies had things that we had on our intranet portal of our -- where the resources are. They had the pharmacist manual at each pharmacy from the DEA, various Board of Pharmacy rules and regs, and certainly any things -- education, training, or things that were provided from the board or other sources.

So there was a multitude of things that were available and certainly disseminated to the stores.

Q. You mentioned the DEA pharmacist's manual in your answer. Is that a manual used in the industry by pharmacists in their day-to-day practice?

A. Yes. Absolutely.

Q. In fact, do you have experience as a professional pharmacist using the DEA pharmacist's manual in your dispensing experience?

A. Yes.

Q. And is that manual -- is it your

testimony that that manual was always available to Giant Eagle pharmacists during the time period we're talking about, which is basically 2006 to 2019?

A. Yes.

Q. Okay. Now, the dispensing guidelines for Giant Eagle have several sections called "Appropriateness of Controlled Substance Prescriptions (red flags)."

Why issue this to your pharmacists and pharmacies if they already have the DEA pharmacist manual? What's the purpose of sending this out and calling these guidelines and telling your pharmacies and pharmacists about these red flags?

A. So it's important to continue as part of any licensed practitioner, and certainly in the pharmacist perspective, there's continuing education, there's training, there's things that change in the marketplace and things to be aware of.

What was important here is around this time, the DEA was more vocal about red flags and things to consider based on the

prescribing by practitioners and things that was in the marketplace.

So it was just a good idea to make sure that all these things continue to be top of mind for our pharmacists, which already were, certainly, but adding it -- adding it for them to consider, which they already consider these things as well, but, again, continuing to reinforce information.

Q. Now, are red flags -- do they apply across the board to every patient, or are they individualized by patient?

A. They're individualized by patient. There is no one size fits all red flag.

Q. Okay. Now, in your last deposition in March, you were asked a lot of questions about so-called physical security controls.

Do you recall that line of questioning?

A. Yes.

Q. I want to follow up a little bit with that.

Are all Giant Eagle pharmacies

located inside Giant Eagle grocery stores?

A. Yes.

Q. And does that have anything to do with security in a good way or a bad way or any way?

A. Certainly from a security perspective, we're inside of a bigger, larger business. Many of our stores have -- all of our stores have security and loss prevention. Some have armed security, local police departments and armed security, depending on the store and location and volume of the stores.

There's more management staff. There's more employees in the stores. Certainly being in a location in the store usually typically to the back or to the side, certainly -- we're within a larger business.

Q. Okay. And wherever the pharmacy is in the grocery stores, are there physical segregations or security systems that prevent just grocery customers from accessing the pharmacy or even grocery employees, for example?

A. Yes, absolutely. The pharmacy is a separate department with barriers and

barricades. And certainly after hours, all that is locked up and secured.

All of the pharmacies have state-of-art monitoring systems, camera systems, alarm systems that monitor all the activity of the pharmacy, both from the employee level on the interior of the pharmacy or anyone outside of the pharmacy, including any of the back areas that are adjacent to the pharmacy.

Q. Can grocery employees or grocery customers gain access to the pharmacy?

A. They cannot.

Q. Is the access to the pharmacy limited in some way?

A. The access to the pharmacy is absolutely limited to the employees of the store -- of the pharmacy rather, and limited access for members of management only when a pharmacist is present and has allowed them to enter.

Q. Now, with respect to how the pharmacies handle controlled substances, including opioids, are there special procedures and policies that Giant Eagle has implemented

and follows to specially handle controlled substances?

A. Yes. Absolutely. We follow all of the policy and procedures certainly in regards to controlled substances that the DEA has set forth.

And we go above and beyond with our own policy and procedures on how we handle controlled substances, how they're received, how they're unpacked, how they're stored, who has access to keys to access the locked safes and cabinets that the controlled substances are in. All that is documented and all of that is under surveillance at all times.

Q. You mentioned how controlled substances are received. Let's take it a step back.

When a pharmacist enters an order for a controlled substance, that either goes to the Giant Eagle distribution warehouse or to either McKesson -- McKesson at the time; is that right?

A. At the time it was McKesson. Currently it's Cardinal, yes.

Q. It's currently Cardinal.

And when a pharmacist enters an order for a controlled substance, is there -- are there controls and oversight over that process? Can a pharmacist, for example, order, you know, 100 bottles of OxyContin willy-nilly without any oversight?

A. They cannot. An order can be placed, but that order is scrutinized for validity and for volume and from a threshold perspective, that if they order more than we -- more than a threshold allows, that order will be kicked out and not effectively filled.

Q. Okay. That threshold system you mentioned, I think you testified that that began in 2013; is that right?

A. The automated threshold system, yes.

Q. Okay. Was there some other non-automated threshold system before then?

A. Certainly there was folks in the compliance department and employees whose sole job was to monitor activities at the store, orders. Our own warehouse, too, monitoring

orders that left the warehouse for the stores, folks from corporate certainly on the same orders and certainly the prescriptions that were dispensed. So there was always supervision.

Q. Now, did the DEA approve and inspect prior to opening and after opening both of Giant Eagle's drug warehouses, the HBC and the GERx facilities?

A. Yes.

Q. Now, HBC and GERx never operated simultaneously with respect to controlled substances; is that correct?

A. That is correct.

Q. And, in fact, Giant Eagle didn't even distribute any controlled substances until November of 2009; is that right?

A. That is correct.

Q. And then the license that it had for the HBC warehouse was a Schedule III, IV, V license; is that right?

A. That is correct.

Q. And HBC never had a Schedule II license; is that right?

A. Correct.

Q. And some of the most prominent drugs in this case are Schedule II opioids; is that right?

MR. GADDY: Objection to form.

A. There were Schedule III opioids that were reclassed to Schedule II in October of 2016.

Q. Right. But you're aware that in this case, the focus is on Schedule II opioids; is that right?

MR. GADDY: Objection; form.

A. Yes.

Q. And my point is that HBC's license never permitted it to distribute any Schedule II opioids; is that correct?

A. That is correct.

Q. Okay. But with respect to the HBC warehouse, in order to be licensed, it had to apply and be approved and be inspected by the DEA; is that right?

A. Yes.

Q. And in order to maintain its license, it had to go through random inspections where the DEA agents would show up and demand to

see records and inspect the warehouse and things of that nature, correct?

A. Correct.

MR. GADDY: Object to form.

Bob, you objected all throughout my questioning about distribution related issues, and you're asking him about a warehouse being licensed. This has nothing to do with dispensing.

Q. Are you familiar with that, Mr. Tsipakis?

A. Yes.

Q. Okay. The inspections prior to 2013 of the Giant Eagle HBC facility, were you aware that the DEA looked at Giant Eagle's operations, including its SOM system, suspicious order monitoring system, prior to 2013?

MR. GADDY: Form and scope. This is not included in any of the topics of the 30(b(6) notice that deals with dispensing issues.

Q. You can answer, Jim.

A. Yes.

Q. All right. And are you aware in

2013 of the DEA -- well, 2009 through 2013, the DEA inspections all concluded full compliance with Giant Eagle's and full compliance with all DEA regulations?

A. Yes.

MR. GADDY: Form, scope, misstates the evidence.

Q. Was that a yes, Mr. Tsipakis?

A. Yes.

MR. GADDY: Same objections.

Q. Now, in 2013, are you aware that the DEA as part of its inspection in 2013 made a recommendation that Giant Eagle add an automated system -- a threshold system to all of its other internal controls as a recommendation to improve their controls?

MR. GADDY: Form, scope, misstates.

A. Yes.

Q. Okay. And to your understanding, is that -- was that the trigger for the creation of the threshold report in 2013, the automated report?

MR. GADDY: Form, scope.

A. Yes.

Q. Okay. And even without the automated threshold report, was it your understanding or is it your understanding that the DEA had concluded Giant Eagle was in full compliance with all DEA regulations, including SOM regulations, even without an automated threshold report?

MR. GADDY: Form; scope; misstates. Colosimo said they were not in full compliance.

MR. BARNES: Actually, your objection misstates, if anything.

A. The answer is yes.

Q. Okay. So was the automated threshold report an add-on control to an already fully compliant system at the HBC warehouse?

MR. GADDY: Form, scope, misstates.

A. Yes. It was our intent of continual improvement, continuous improvement.

Q. Okay. So getting back to at the pharmacy level. So a pharmacist enters an order for a controlled substance, and it either goes

to HBC at the time -- which couldn't take any Schedule II orders, so it would have to go to McKesson, correct?

A. Correct.

Q. But then later for GERx, the GERx facility had a Schedule II license, right, beginning in about March of 2016?

A. That is correct.

Q. Okay. And that facility also had to go through DEA application, pre-open inspection, post-open inspections, et cetera, correct?

MR. GADDY: Form, scope.

A. Yes. Absolutely.

Q. And is it your understanding that the DEA had similarly concluded that the GERx facility met all the requirements, including the SOM regulations?

MR. GADDY: Form, scope, misstates.

A. Yes. And actually even on the controlled substance vault, the C-II vault that we had, they commented on how well that was put together and actually even above what was

required, so yes.

Q. Okay. So getting back to the placement of an order.

So a pharmacist decides to fill in his professional judgment a controlled substance prescription, and if it's during the HBC time, if it's a Schedule II, that has to go to -- excuse me -- it has to go to McKesson, correct?

A. Correct.

Q. If it's Schedule III, IV, V, it could go to HBC, correct?

A. Correct.

Q. All right. And are you aware of any controls at those facilities on the order?

Let's first -- let's pretend it's a Schedule II and it has to go to McKesson.

To your knowledge, did McKesson implement and enforce controls on Giant Eagle pharmacy orders going to McKesson?

A. Yes.

MR. GADDY: Form, scope.

Q. Now, with respect to the -- if it went to the HBC facility because it wasn't a Schedule II -- and, therefore, had nothing to do

with this case -- let's say, if it was for some product, say, an opioid Schedule III, were there controls at the warehouse over that order that would make sure that the pharmacist was entering a legitimate order?

A. Yes.

MR. GADDY: Form, scope.

A. Yes. Absolutely.

Q. Okay. And you already covered in your 2018 deposition all the controls at the warehouse. And I don't want to repeat any of that other than to say, did you generally describe all of those controls in your December 2018 deposition?

A. Yes, I did.

Q. Okay. So what controls occur -- once an order goes in and it goes through either a McKesson review or an HBC review, are there corporate level controls over those orders in addition to those two levels of control?

MR. GADDY: Objection to form. Objection to scope. This is supposed to be a dispensing deposition, not talking about distribution related controls.

Q. Go ahead, Jim.
A. Yes.
Q. Okay. And what are some of the corporate level controls over those orders in addition to the warehouse or McKesson level controls?
MR. GADDY: Can I get a standing objection to all the questions regarding distribution and warehouses and controls on ordering of controlled substances as opposed to dispensing?
MR. BARNES: You asked a lot about threshold reports.
MR. GADDY: I'm just asking if I can get a standing objection so I don't have to interrupt you every time.
MR. BARNES: Yep.
MR. GADDY: Thank you.
BY MR. BARNES:
Q. So, Jim, go ahead. Corporate-type controls over orders.
What did some of those controls include?
A. Sure. So we had corporate

compliance individuals who were monitoring those orders. We had internal auditors that if there were concerns about orders, we could dispatch. We had our pharmacy district managers who were dispatched if there were things that we wanted them to look at. Reports that were regularly run on things that we wanted to keep an eye on and abreast of.

We also had an open dialogue on a communication of things, whether from a loss prevention side on things for us to keep an eye on, or external things that were happening at other chains or other places that we would get information on that we would act on, and proactively prepare for and screen for.

So, really, it was a system of multiple touch points all working for the same purpose, to make sure that all of our orders were scrutinized and being handled in the appropriate fashion.

Q. All right. And when the controlled substances arrived at the pharmacy, were there controls over those incoming controlled substances such that they were

maintained differently than other stock, for example?

A. Yes. Absolutely. They would come in different identifiable totes. Pharmacists only would be allowed to open those totes. They would be required to check in those products for any shortages or any -- making sure that the product arrived intact.

And it was their responsibility if there was any discrepancies, to immediately flag those discrepancies, saving those invoices, signing off on those invoices, and then properly putting that inventory into stock and updating any on-hand quantities related to those drugs.

Q. And where were, say, Schedule II controlled substances kept? Were they kept with the regular stock, or were they segregated?

A. They were segregated in a locked safe. And the products would come in on a secured tote. Pharmacists only would be allowed to open that tote, would check in the product, and then immediately put that product into the safe adding it to the current inventory on hand.

Q. Meanwhile, you testified back in

December of '18 about the inventory management system that the warehouse had.

Was the inventory management system used at Giant Eagle, was it monitoring the flow of product from the warehouse to the pharmacies?

A. Yes.

Q. And so not only was there a physical check-in process, was the computerized inventory system updating itself to show the arrival of the product at the pharmacies?

A. Yes.

Q. Now, when the controlled substances were put in the safes, what was the next movement of that product? Was it a filling of a prescription?

A. That product would not come out of the safe unless it was pursuant to a prescription that needed to be dispensed or counted during our monthly narc audits.

Q. Now, is a monthly narc audit -- by "narc," do you mean a Schedule II controlled substance, on is it broader than that?

A. Schedule II product, yes.

Q. Okay. Does the DEA or the Ohio Board of Pharmacy require a monthly narc audit?

A. They do not.

Q. Why does Giant Eagle do it every month?

A. It's important for us to make sure that we have a proper control -- actually, better than required control on our controlled substances to make sure that with everything -- with the dispensing and with the pharmacists, that the counts are reflective to what we say we have on hand.

Q. And that occurred on a monthly basis throughout this entire time period?

A. Correct.

Q. Now, did there come a point in time when the controlled substances went on a perpetual inventory system?

A. Yes.

Q. Such that product was updated constantly every time it was moved, the inventory was updated?

A. Yes.

Q. Do you know when approximately

that occurred?

A. I think it -- I believe it started somewhere about 2015, I believe.

Q. Is that something that the DEA or the Ohio Board of Pharmacy required, a perpetual controlled substance inventory?

A. No. That was us in our quest for continual improvement and continual progress that we chose to do that.

Q. So once you went perpetual, were you able to track on a second-by-second basis the flow of controlled substances through your pharmacies?

A. In realtime, yes.

Q. In realtime. And the legal requirement, as you understood it from the DEA, is just count it once every two years?

A. During the biennial inventory, which is the only requirement, yes, from the DEA.

Q. So rather than wait every two years, you were counting it in realtime?

A. Correct. For Schedule IIs, yes. Correct.

Q. Okay. And so the -- what about the movement? If a pharmacist then gets a prescription for a controlled substance, say, for 30 pills of some opioid, let's say Vicodin, would they have to then -- he or she have to access that safe -- what types of controls would govern that process of filling that Vicodin prescription?

A. Per our policy, only pharmacists have access and keys to the safe. Keys are not left out. The pharmacist on his or her person have those keys to that safe for their shift, and only they have ability to go into that safe, remove the product that they need to fill pursuant to that prescription.

Q. Is there any special handling of that product while it's outside of the safe in terms of taking the 30 pills out for that fill and counting -- making sure that the counts are correct?

A. It's in complete control of the pharmacist at all times, and it's also double counted and notated that it's been double counted.

Q. What do you mean by "double counting"? What does that mean?

A. So, say, it's a prescription for 30, the pharmacist will count it the first time, the 30 pills, and then they'll make sure again that it's 30 pills.

Q. What about any counting of what's left in the bigger bottle from where the 30 came from?

A. Yeah. It's our process of backcounting as we call it. So for -- as an illustrative example, let's say there's a bottle of 100 pills of an opiate, let's say Vicodin in a bottle, we dispense 30 of it. The pharmacist is counting the original 30 for the prescription. And then the 30 minus 100, there should be 70 left in the original stock bottle, so counting to make sure there's 70 left in that bottle before it goes back into the safe.

Q. Is that something that's required by the DEA or the Ohio Board of Pharmacy?

A. It is not.

Q. Well, why do it?

A. It's -- it was an improvement

for -- as a chain and for us as a continual double check to make sure that all product -- we were aware where the product was, what the on-hands were, and an ability for us to identify any discrepancies in realtime.

Q. Okay. You mentioned a pharmacy loss prevention department with Rick Shaheen several times in the last deposition and today.

Why does Giant Eagle have a separate pharmacy loss prevention department?

A. It's important for us to have a separate resource, a dedicated resource that's not just another department where they're checking on the whole store and this is just an added -- we felt very strongly that it was important to have an independent, fully resourced department to help assist and have oversight of our pharmacies from a physical security, a drug security, and certainly controlled substance security.

Q. Rick Shaheen -- is he in charge of that department?

A. He is.

Q. And is he experienced in pharmacy

diversion?

MR. GADDY: Objection to form.

A. Extremely experienced. His pedigree is many years at the attorney general's office working with the DEA as well, and certainly as a prosecutor helping in the attorney general's office in a prosecution of cases exactly on diversion and criminal activity.

Q. Okay. You were asked some questions about the tools that Giant Eagle provides for its pharmacists.

One of the tools I wanted to ask you about is what type of dispensing software does Giant Eagle use in its pharmacies or has it used going all the way back to 2006?

A. Giant Eagle pharmacies utilize a pharmacy dispensing software from the PDX -- it's PDX Corporation. And it's one of the gold standard, state-of-the-art system, that's available on the market and still is available on the market.

Q. All right. And are there things that the pharmacist is forced to go through when

filling a prescription when using that PDX dispensing software?

A. There's a certain workflow that they need to go through, yes.

Q. Does this software include things like patient profiles and drug utilization reviews?

A. Yes. Absolutely.

Q. The software dispensing system that Giant Eagle used, was it subjected to repeated Ohio Board of Pharmacy inspections and audits?

A. Yes. Absolutely. Continual check-ins on it. And certainly as we rolled out new modules or improvements on the system, that was -- at the next inspection, was highlighted or looked at from the board, certainly.

Q. To your knowledge, did the Board of Pharmacy ever criticize or suggest to Giant Eagle that it should -- it needed better dispensing software than what it was using?

A. Never.

Q. Are you familiar with something called rx.com?

A. Yes.
Q. What is it?
A. Rx.com is basically the central database that the pharmacy software in the stores use to communicate with each other. Basically the central prescriber database, if you will, or where the data resides.
Q. Is that something that's required by either the DEA or the Ohio Board of Pharmacy?
A. No.
Q. But is it something that Giant Eagle added onto its software system to provide more information to its pharmacists?
A. Yes.
Q. And so using the PDX software with the rx.com, were Giant Eagle pharmacists able to view a patient's prescription history across the entire chain?
A. Yes.
Q. And was that something that would come up as part of the workflow modules in the PDX dispensing software?
A. It would be part of the DUR process, yes.

Q. Okay. The -- we mentioned the OARRS database. Were Giant Eagle pharmacists provided access to the OARRS database from the time it was created through the time period at issue?

A. Yes.

Q. And did there come a point in time that OARRS was embedded in the software dispensing system?

A. Yes.

Q. And why -- why did Giant Eagle go through that process of embedding the OARRS access right in the software system?

A. As was -- as our history, we were trying to make things easier for our pharmacists, and certainly instead of them having to leave the screen that they were on to log in to a separate window or a separate website, we embedded it within the workflow process to make it that much easier for them to be able to get the information efficiently and effectively versus having to -- basically like a single sign-on versus them requiring to spend a lot of time digging, hunting, and pecking for

the information right at their fingertips.

Q. And when approximately was the OARRS access embedded in the software as opposed to being an independently accessible database?

A. The exact date I can't remember, but I believe it was somewhere around 2016, 2017, the beginnings of it.

Q. What is your understanding of what the OARRS database provides to the pharmacists at the point of dispensing? What kind of information does it provide?

MR. GADDY: Objection to form.

A. It provides information on a particular patient, controlled substances and medications that have been filled across any store or any provider.

Q. In your experience as a pharmacist, are these PDM programs helpful pieces of information in making a professional judgment to fill or not fill a prescription?

A. Yes, absolutely helpful data point.

Q. Does OARRS restrict the pharmacist's access in any way? In other words,

can a pharmacist go in and just roam around the OARRS database and see what he or she feels like?

A. The OARRS database is a restricted database. There's only certain views the pharmacist can see and are allowed access to.

Q. And is it primarily this patient -- the activity of this patient in front of him?

A. Yes. It's that particular patient with that date of birth and activity related to that patient in the query or the search. Yes.

Q. And are you familiar that OARRS is a branch of the Ohio Board of Pharmacy?

A. Yes, I am.

Q. And do you know that OARRS takes in information from every pharmacy in the state, every prescription filled by every pharmacy in the state on a daily basis?

A. Yes.

Q. Now, Giant Eagle certainly doesn't have the access to that kind of information; is that correct?

A. To the OARRS information? No.

Q. Right. And my point is that Giant Eagle knows what its pharmacies are doing, but it doesn't know what all the other pharmacies are doing; is that right?

A. Correct. Yes.

Q. All right. And then do you know whether OARRS -- besides taking in the information, whether or not OARRS has investigators and agents and analysts that analyze that information?

A. OARRS is a multi-faceted tool. There's the face of the tool that the pharmacists access for the information that was just described on a particular patient and medication history across any store in the state. But certainly loss prevention, DEA, others use the back end of that to do their queries and investigative searches. They have more ability to access other information that we do not.

Q. Do you know, for example, does OARRS -- when taking in every pharmacist's prescription activity, do they look for things like doctor shoppers and, you know, patients

moving from doctor to doctor or abusing the system, drug seeking --

MR. GADDY: Objection.

Q. -- drug seeking behavior?

MR. GADDY: Objection to form.

A. My understanding is that the OARRS database, the back end of that, the Board of Pharmacy and law enforcement use that to identify patterns or places that they want to investigate or things that they want to investigate.

That is information that they typically use -- for example, it's not uncommon for a law enforcement to show up on our pharmacy, and say, "I need these prescriptions" or "I need information on this patient."

And where they get that information is from an OARRS type database that gives them the ability to look for things they want to look at. And then they follow up accordingly to where they want to look at.

So traditionally that's how they would end up at our pharmacy for a prescription or more information.

MR. GADDY: Bob, I'm sorry to interrupt. I didn't -- I made a mistake and didn't assume you were going to go this long. If you've got more than five or ten minutes, do you mind if we take a quick bathroom break?

MR. BARNES: You want to take a bathroom break now or five or ten minutes from now?

MR. GADDY: If you're going to be done in five or ten minutes, I can probably make it, but if you've got more than that then ...

MR. BARNES: No, no. We better take a break then.

MR. GADDY: Okay. Thanks.

MR. BARNES: Okay.

THE VIDEOGRAPHER: The time is 12:00 p.m. Off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 12:10 p.m. Back on the record.

BY MR. BARNES:

Q. Mr. Tsipakis, we were talking

about how -- the tools provided for pharmacists by Giant Eagle. We talked about the pharmacy dispensing system, rx.com and/OARRS.

Is there a method for Giant Eagle pharmacists to check on the status of a doctor's license before they issue a prescription or fill a prescription?

A. Yes. That's integrated into the pharmacy software. Yes.

Q. And is that updated on a continual basis by a third-party vendor?

A. Yes.

Q. So if a doctor's license is revoked, is it your experience that the software will pick that up pretty quickly?

MR. GADDY: Objection to form.

A. Yeah. I don't even know the exact, but it's hours. It would pick it up in hours, yes.

Q. And what about if a doctor is suspended, in the industry, is any notation made that the doctor's license has been suspended in some way?

A. No.

Q. Okay. Is that something that you have to find out indirectly?

A. Usually if it's similar, like, to how even pharmacy -- they'll show a notation on the website that says "sanctioned" or "fined" or something, but it won't tell you why or any of the details behind that action.

Q. Did the DEA or the Ohio Board of Pharmacy ever advise Giant Eagle that it needed to do anything more than check the status of the doctor's license as part of its software dispensing system?

A. Never.

Q. Are you familiar with something called a BOLO, B-O-L-O?

A. Yes. Be on the lookout, yes.

Q. What is that exactly?

A. So that is a moniker that our -- Rick Shaheen in our loss prevention use. BOLO short for "be on the lookout."

Q. And did Giant Eagle corporate, including its loss prevention personnel, advise pharmacies, Giant Eagle pharmacies, chain-wide to be on the lookout for certain things like

drug rings or forgery rings or bad doctors, things of that nature?

MR. GADDY: Objection to form.

A. Yes. Absolutely. Either if there was information that our stores themselves had information, loss prevention, or corporate had from whatever source that came in, whether it was from an investigative source, FBI, DEA, Board of Pharmacy, there would be an e-mail communication sent out to all stores. And the stores check their e-mails often, and they would be flagged that there was a message. Then they would read that message and disseminate that information.

Q. And did the Giant Eagle pharmacists go through regular training and have regular meetings with other pharmacists in the chain?

MR. GADDY: Objection; form.

A. Yes.

Q. What kind of training? What kind of meetings did they go through?

A. So pharmacists are required to go through a continuing education process, and

certainly as a corporation, we had a continuous quality improvement process, so there's quarterly meetings we do. There's calls that we do with the districts.

There's annual meetings that we have where we bring all the pharmacists together pre-COVID, and there's multiple touch points with our pharmacists and our management from our management down to our pharmacists and our technicians.

Q. And does Giant Eagle employ district leaders called pharmacy district leaders or PDLs?

A. We do, yes.

Q. And are they responsible for multiple stores in a region, and do they travel from store to store?

A. Yes. We have the pharmacy district leader that's in place to support a number of stores that they're responsible for to help them lead and practice the profession of pharmacy, support the pharmacy, and make sure that they have everything that they need, and also follow up with anything we need them to

follow up on.

Q. And do the PDLs do quality audits when they visit the pharmacies?

A. Regularly, yes.

MR. GADDY: Object to form.

Q. Does that include making sure that the pharmacists are following Giant Eagle policies and procedures?

A. Yes. Absolutely. They have a checklist of things that they look for, and that is definitely one of the top things that they look for on that checklist.

Q. And how about the pharmacy loss prevention personnel, Rick Shaheen and others that work under him, are they in the stores a lot?

MR. GADDY: Objection to form.

A. They're in the stores doing audits regularly, and then certainly they come in unannounced, or certainly if we have a concern that we would -- either a concern from store level or a concern from corporate level, we dispatch them to follow up, yes.

Q. And at the corporate level, does

Giant Eagle monitor its pharmacies to look for things like high volumes of controlled substances being dispensed, things of that nature?

A. Yes.

Q. Are you aware of any Giant Eagle pharmacy throughout the entire chain dispensing excessive amounts of controlled substances?

A. We're dispensing prescriptions that were pursuant to a legally authorized prescription that was presented to us.

Q. Right. But are you familiar with so-called pill mills and things of that nature where there's large amounts of, if not exclusively, controlled substances being dispensed, things of that nature?

A. No.

Q. You're not familiar with that? Okay.

But my question, Mr. Tsipakis, is, does Giant Eagle watch its pharmacies to ensure that there are not large amounts of -- unusual amounts of controlled substances being dispensed?

MR. GADDY: Objection to form.

A. We absolutely monitor, and if there's a concern or something we want to investigate in further detail, we absolutely do that.

Q. Does Giant Eagle watch to make sure that what's going into the stores is going out properly through prescription filling?

A. Yes. Absolutely. And we monitor what comes into the pharmacy, what leaves the pharmacy, and what should be left on the pharmacy counter.

Q. Okay. Are you familiar with the term "controlled records box, controlled substance records box" at Giant Eagle?

A. Yes.

Q. What is it?

A. It's a box similar to a banker's box or a file folder box where it's basically one place that all the information around controlled substances can be neatly organized and kept, which includes the pharmacist manual -- the DEA pharmacist manual was in there, any Board of Pharmacy regulations, all

our controlled substance invoices, our 222 forms are kept in there.

Everything is in a nice organized place that -- whether it's for our own employees or certainly during inspections, routine inspections that DEA, law enforcement, et cetera, it's nice and neatly organized and accessible.

Q. Would you look at the file folder that has these manila folders numbered 1 through 43.

MR. BARNES: Jeff, these were sent to you separately.

MR. GADDY: Thanks, Bob.

- - -

(Tsipakis Deposition Exhibit 7 marked.)

- - -

BY MR. BARNES:

Q. And I want to have you pull out 41, 42 and 43.

And for file 40, we'll mark this Tsipakis Exhibit 7.

Can you identify Exhibit 7, Mr. Tsipakis.

A. Sure. It's entitled "Controlled Records Box."

Q. And is this a Giant Eagle business record?

MR. GADDY: Object to form.

A. Yes.

Q. The second page on the flip side appears to be a photograph of a 2011 pharmacy controlled drug records box; is that correct?

A. Correct.

Q. Is this what the controlled record box looks like at the pharmacies?

A. Yes.

Q. And does this documentation show what's in these controlled records boxes -- I'll just flip through it.

Section 1 is C-III through V invoices; is that right?

A. Correct.

Q. Section 2 is the C-II invoices and executed DEA Form 222s.

Do you see that?

A. Correct. Yes.

Q. And these are the DEA ordering

forms for Schedule II controlled substances; is that right?

A. Correct.

Q. And then Section 3 is the unexecuted 222s?

A. Correct.

Q. Section 4 is outdated controlled drug return documentation?

A. Correct.

Q. Section 5, power of attorney forms.

MR. GADDY: Bob, is this a document that you've produced? Mine doesn't have a Bates number on it.

MR. BARNES: I believe so, yeah.

MR. GADDY: Do you have the Bates number for this document?

MR. BARNES: It's at the front.

MR. KOBRIN: It's Bates number it's the native -- it's a PowerPoint. So the Bates number is GE_TL00012826.

MR. BARNES: It's on the front page, Jim.

MR. GADDY: Okay. Thank you.

BY MR. BARNES:

Q. Section 5, power of attorney; Section 6, biannual controlled drug inventory.

Do you see that, Mr. Tsipakis?

A. Yes.

Q. Is that Section 6 -- is that the every two-year inventory that the DEA requires that you previously testified to?

A. The DEA requires every two years. We do it annually on top of our others, yes.

Q. But this Section 6 is for the one that the DEA requires, not for the monthly or perpetuals?

A. Correct.

Q. Okay. Section 7 are the technician protocols.

Does Giant Eagle have protocols that its pharmacy technicians must follow in its pharmacies?

A. Yes.

Q. And are they overseen by pharmacists?

A. They are, yes.

Q. Section 8 is past inspection

reports. This would be Ohio Board of Pharmacy type inspections of that pharmacy; is that right?

A. Correct. And DEA. Sure. Yes.

Q. And finally, Section 9 is pharmacy regular regulatory materials. Would that include the DEA manual that you testified earlier to?

A. Yes.

- - -

(Tsipakis Deposition Exhibit 8 marked.)

- - -

BY MR. BARNES:

Q. All right. Go to file 41. We'll call this Tsipakis Exhibit 8.

Can you identify Exhibit 8, sir?

A. Exhibit 8 starts with -- it looks like a presentation -- "Controlled Drug Records Box Instructions."

Q. Is this a business record of Giant Eagle?

MR. GADDY: Objection to form.

A. Yes, it is.

Q. And does this show what the

contents of the controlled record box should be as of 2019?

A. Yes.

Q. And does that include in Section 13 pharmacy regulatory materials including the DEA pharmacy manual?

A. Yes.

- - -

(Tsipakis Deposition Exhibit 9 marked.)

- - -

BY MR. BARNES:

Q. All right. Go to file 42, sir. We'll call this Exhibit 9.

A. This is the pharmacist manual, the DEA manual.

Q. Is this the manual that was available to and accessible to the Giant Eagle pharmacies at all times?

A. Yes.

- - -

(Tsipakis Deposition Exhibit 10 marked.)

- - -

BY MR. BARNES:

Q. And, lastly, Exhibit 10 will be

from file 43. It's captioned "Controlled Drug Box Memo 2012." It appears to have contents for the controlled substance box or similar to the last two exhibits; is that correct?

A. That is correct.

Q. Is this another business record of Giant Eagle?

A. Yes, it is.

Q. Okay. You were asked by Mr. Mougey back in March some questions about the pharmacists being the so-called last line of defense.

Do you recall that questioning?

A. Yes, I do.

Q. With respect to the role of -- let's start with the doctor.

What is your understanding of how the term "last line of defense" interplays with the role of the doctor?

MR. GADDY: Objection to form.

A. Certainly from a health care -- from a patient's treatment and care, there's a team of folks that are all working together for the treatment and the care of that patient.

It all starts in the primary individual and the practitioner -- the physician or nurse practitioner or physician's assistant. So it could be an M.D., or it could be a different level provider.

But, regardless, it's the main -- the main interaction is with a caregiver who has the patient's diagnosis, medical condition, labs, all the other information that they have to care for that patient and treat that patient. Certainly there could be some other mid-level providers involved in that interaction.

If that interaction requires a prescription to be issued, then that prescription will either come to us electronically or by the patient themselves, and that will present itself to our pharmacy counter. Our pharmacy, I should say.

Q. Stop right there, because I'll break that next step down.

But a doctor or nurse practitioner or physician's assistant, are these folks that have prescribing authority; is that correct?

A. Yes. Correct.

Q. Under their doctor's license or nurse practitioner license or PA license; is that right?

A. Correct. Yes.

Q. And is it -- at the point of issuing the prescription, is that where the medical judgment comes in? There's a medical judgment made by the doctor or these other licensed personnel?

A. Yes.

Q. Is that right?

A. Correct.

Q. And are these -- I'll call them doctors, but I mean all prescribers, but I'll use the term "doctors."

The doctors, before they issue a prescription, are they supposed to check for red flags?

A. Yes.

Q. In fact, the doctors are the ones that have the physician-patient relationship; is that correct?

A. That is correct.

Q. And it's the doctors that know the

medical history of the patient and do the examinations and make the diagnoses and come up with a treatment plan; is that correct?

MR. GADDY: Objection; form.

A. Correct.

Q. Okay. And is it the doctor then that makes the risk-benefit type determination for, say, an opioid prescription after doing those exams and making those medical judgments; is that correct?

MR. GADDY: Objection to form.

A. Yes, that is correct.

Q. All right. So by the time the patient leaves their doctor's office with their prescription, a medical judgment and evaluation has been made and red flags have been analyzed.

Is that your understanding as a pharmacist?

MR. GADDY: Objection to form.

A. And they're required to look at the same OARRS system that our pharmacists look at as well, yes.

Q. All right. So by the time the patient brings it in or it's electronically sent

to the pharmacist, is it your understanding as a pharmacist that those medical judgments and risk-benefits and examinations and evaluations have already been made?

MR. GADDY: Objection to form.

A. Yes.

Q. And is it your role as the pharmacist to reevaluate, reexamine, reinterpret, or second-guess the medical judgment of the issuing prescribers?

MR. GADDY: Objection to form.

A. No, it is not.

Q. Are you supposed to rereview the medical history of the patient at the time of dispensing?

A. No. We're not qualified -- I don't have the medical training or experience to do that, no. We wouldn't do that. We wouldn't have that ability as a pharmacist.

Q. Okay. And in your experience, have you found that most doctors issue their prescriptions in good faith intending to provide legitimate treatment for a legitimate patient?

A. Yes.

MR. GADDY: Objection to form.

Q. Pardon me?

A. Yes.

Q. So then now let's focus in. With all those parameters, now you're the pharmacist and all these medical judgments have been made and all these things have been weighed, you're presented with a prescription. What's your role?

MR. GADDY: Objection to form.

A. So our role is to take in that prescription, certainly have the information we need about the patient's, you know, gender, weight, medical -- the medical history was done from the physician's office, but for our purpose, we know looking at what prescriptions they are currently on, what OTCs they take, so from our perspective, we're looking for the drug that was prescribed, if there's any contraindications and dosing of that particular prescription, anything that it counteracts with, anything that they're currently taking from a disease state perspective.

We're also doing a DUR -- and that

all is part of the DUR process, drug utilization review.

We're also looking for the legitimacy of that prescription in the case of a controlled substance, was it issued by a doctor or a practitioner that is authorized to write for that prescription. So we're assessing all those pieces of information.

And then if there's any concern in follow-up we need from the physician's office, let's say, we would do all that, if there's any more information that we need.

And then finally it gets to the point of dispensing that particular prescription and going over the prescription with the patient so that they understand how to use that medication, what are the important things for them to know about the medication, side effects, potential side effects, about the prescription, and basically counseling the patient on how to use that medication to be part of their care plan.

Q. Okay. Does the pharmacy's role include looking for forgeries and, you know,

that type of alter -- or other alterations of a prescription?

A. Sure. That's part of the legitimacy of the prescription. But, yes, we're looking to make sure that the prescription was authorized by an authorized practitioner, it has not been altered or changed, or if it's a forged prescription, yes.

Q. And are you familiar with state regulations such as the Ohio Board of Pharmacy issuing regulations for how a prescription is supposed to be filled?

A. Yes.

Q. And does Giant Eagle make sure that when it's filling prescriptions, it's in compliance with those regulations?

MR. GADDY: Objection to form.

A. Yes.

Q. And the Ohio regulations, the so-called manner of processing prescriptions, do they include things like having a patient profile?

A. Yes.

Q. And does Giant Eagle have a

patient profile in its software system?
A. Absolutely. Yes.
Q. And does it include doing a drug utilization review?
A. Yes.
Q. And does Giant Eagle software system include a drug utilization review?
A. Yes.
Q. And does that include, when necessary or appropriate, checking the OARRS database as prescribed in the regulations or when to check the OARRS database?
A. Yes.
Q. And do the manner of processing regulations for Ohio, do they further provide -- besides the patient profile and a DUR, do they provide for labeling the prescription properly?
A. Yes.
Q. And does Giant Eagle have a system for making sure its filled prescriptions are properly labeled?
A. Yes, we do.
Q. And, further, do those manner of processing regulations have a fourth step, which

is provide counseling, at least a counseling opportunity, to the patient?

A. Yes.

Q. And does Giant Eagle provide such counseling or an opportunity for counseling?

A. Yes. Absolutely.

Q. And the final -- the fifth step of the manner of processing regulations include proper recordkeeping, keeping the hard copy of the prescription or the electronic prescription available for certain periods of time.

Are you familiar with that?

A. Yes.

Q. And does Giant Eagle follow those regulations in terms of keeping those prescriptions, hard copy or electronic copy, as appropriate?

A. Yes, we do.

Q. Now, once the prescription is -- I'm sorry.

Are you aware of any other step to the Ohio regulations for filling a regulation besides -- or filling a prescription besides those five steps?

A. No.

Q. To your knowledge, do they include anything about certain types of red flags and stopping the prescription and not filling the prescription if any one or more of the red flags are present?

A. They do not, no.

Q. Do they require the documentation of any due diligence by the pharmacist?

A. No, they do not.

Q. Okay. Now, what about -- besides the doctor's role and the pharmacist's role, what about the patient's role? Does the patient have any role in preventing diversion of a prescription given to them at a pharmacy?

A. Yes, they do. Ultimately the prescription is dispensed to the patient. The patient then would use that medication, would need to store that medication and make sure that it's issued. And right on the bottle of a controlled substance, it federally says there's -- right on there that this is intended for the person that it's prescribed for, not to be given or transferred to anyone else.

So the obligation and certainly the expectation is for us to dispense that prescription to a patient and for only that patient to use that prescription and provide that prescription as well.

Q. Does the pharmacist or the pharmacy have any role in tracking the patients to make sure that they're safeguarding their medications and using them for only their intended purpose?

A. No.

Q. Has the Board of Pharmacy or the DEA ever suggested that Giant Eagle have any role in making sure patients safeguard their medications after they've been dispensed to them?

A. No.

Q. You were asked in your last deposition some questions about audit controls, and you mentioned inventory and audit controls. I wanted to follow up just a little bit on that.

And I think you mentioned a few minutes ago that Giant Eagle has an internal audit department where they have internal

auditors that conduct audits at the pharmacies; is that right?

A. Yes, that's correct.

Q. Okay. Is that another layer of controls that Giant Eagle has at the pharmacies?

A. Yes, it is.

Q. And you also mentioned the PDL quality control audits. Is that another form of corporate control of the pharmacies?

A. Yes, it is.

Q. Are you aware of the Board of Pharmacy or the DEA ever asking Giant Eagle or requiring Giant Eagle to provide data to its pharmacists across the chain, for example, the board -- has the board ever suggested that store number 1 needs to know what store number 2 is doing above and beyond what's already in the Giant Eagle software system?

A. No, they have not.

Q. But is somebody doing that if Giant Eagle is not doing that? Is there another agency that's looking at these prescriptions and analyzing the data and looking for things like pattern prescribing and doctor shopping?

A. Yes. Certainly behind the scenes, there's agencies and certainly within that use the OARRS data similar to the CSOS data that the DEA uses.

So there's absolute -- the agencies have the data and use that data however they use it to come up with their investigative directives.

Q. Okay. With respect to what the Giant Eagle pharmacist can see through its software system, including rx.com, can a Giant Eagle pharmacist see what the patient in front of him or her has filled at all Giant Eagle stores in the chain at the point of dispensing?

A. Yes.

Q. To your knowledge, do the Ohio or the federal regulations require Giant Eagle pharmacists to investigate or look for pattern prescribing or doctor shopping or things of that nature?

MR. GADDY: Objection to form.

Q. Go ahead, Jim.

A. No, they do not.

- - -

(Tsipakis Deposition Exhibit 11 marked.)

- - -

BY MR. BARNES:

Q. You were asked a lot of questions by Mr. Mougey in your last deposition about examples of corporate level type controls. And if you go back to the file we sent you, the files 1 through 39. I'm going to start with exhibit -- file number 2. And this will be Exhibit 11.

A. Okay.

Q. Do you recognize this as a business record of Giant Eagle?

MR. GADDY: Objection; form.

A. Yes, I do.

Q. And can you tell us in summary what this business record reflects in terms of Giant Eagle anti-diversion controls?

A. This is a communication between one of our stores to Rick Shaheen, head of our loss prevention department, basically following up on a phone call. This looks like this was a documentation to a phone call that had happened,

a written follow up to a phone call that happened on a bad prescription or a fake prescription that was attempted to be presented at one of our pharmacies.

And the details are listed about the individual involved, the prescriptions involved, the police being contacted, and basically also leading to the arrest and apprehension of the suspect that actually tried to pass the phoney prescription to us.

And then the follow up from Rick basically complimenting the store and telling them they did a great job on the diligence that they provided, and also that he was going to follow up with in this case the Brentwood Police Department on any follow ups from that case.

Q. Is this an example of something that occurs at the Giant Eagle pharmacies from time to time in terms of pharmacists exercising due diligence with respect to prescriptions attempting to be passed for drugs like oxycodone here. This is oxycodone 15, number 90; oxycodone, 30 milligrams, number 90; and Klonopin.

Those are opioids, correct?

MR. GADDY: Objection to form, scope.

A. Yes. The oxycodone is an opiate, yes.

Q. All right. So is this an example of a Giant Eagle pharmacist detecting a forgery and refusing to fill an oxycodone prescription?

MR. GADDY: Same objections.

A. Yes, it is.

Q. Are there other -- to your knowledge, has this occurred on multiple occasions and this is an example of it occurring?

MR. BARNES: Same objections.

A. Yes.

Q. All right. In that type of a circumstance, are you familiar with the term of "refusal to fill" situation where a pharmacist is presented a prescription, goes through this process and says, "I'm not filling it"?

A. Yes, I'm familiar with that. Yes.

Q. Does Giant Eagle refuse to fill opioid prescriptions? Has that happened?

MR. GADDY: Objection to form.

A. Yes, we do.

Q. And this is an example of that?

A. Yes, it is.

- - -

(Tsipakis Deposition Exhibit 12 marked.)

- - -

BY MR. BARNES:

Q. Go to file 3, which will be Exhibit 12.

Can you identify Exhibit 12 as a business record of Giant Eagle?

MR. GADDY: Objection to form.

A. Yes, it is.

Q. And can you tell us in sum and substance what this is showing in terms of -- it's labeled "Forged Prescription." Is this an example of a Giant Eagle pharmacist detecting a forged prescription from a so-called Philadelphia prescription ring?

MR. BARNES: Form and scope.

A. Yes. It's a -- it's a -- yes.

Q. And in this circumstance, did the Giant Eagle pharmacist bring in law enforcement

and refuse to fill this oxycodone prescription?

MR. BARNES: Same objections.

A. Yes. It was information that our pharmacist used that was successful in combating a forged prescription, which then led to an arrest of 22 people involved in this forgery ring, so a pretty significant -- a pretty significant apprehension of suspects in the ring from Philadelphia. And our pharmacist was involved in helping apprehend these suspects.

Q. The end of the e-mail at the bottom references due diligence and following the controlled substance dispensing guidelines.

Do you see that?

A. Yes.

Q. Is this an example of the Giant Eagle pharmacies following the guidelines and exercising due diligence in combating criminal diversion of opioids?

A. Yes, it does.

- - -

(Tsipakis Deposition Exhibit 13 marked.)

- - -

BY MR. BARNES:

Q. Go to the next file, number 4. We're going to call it Exhibit 13.

Is this a business record of Giant Eagle?

MR. GADDY: Form.

A. Yes, it is.

Q. And does it show the operation of corporate controls over the pharmacies?

MR. GADDY: Object to form, scope.

A. Yes, it does.

Q. And what type of controls are being exercised here, and what is the corporate headquarters looking at in this example?

A. So in this example, we have a pharmacy, one of our pharmacies, contacting the PDL in this case. We're following up with the compliance department about a concern on a physician and basically alerting corporate on what they're seeing at store level, and then also a validation from corporate that they're monitoring this particular doctor, and validating the monitoring for scripts from this doctor.

- - -

(Tsipakis Deposition Exhibit 14 marked.)

- - -

BY MR. BARNES:

Q. Okay. Go to file number 5, which we'll call Exhibit 14.

Do you recognize this as a business record of Giant Eagle?

A. Yes.

Q. This looks very similar to the last Exhibit 13; is that correct?

A. It is.

Q. Just more in the chain of the corporate monitoring of this Dr. Veres, V-e-r-e-s?

A. Yes. It's a continuation of the previous e-mail string, and then more information being passed between the store and corporate in follow up.

- - -

(Tsipakis Deposition Exhibit 15 marked.)

- - -

BY MR. BARNES:

Q. Okay. Go to file 6, which we'll

mark as Exhibit 15.

Do you recognize Exhibit 15 as a business record of Giant Eagle?

A. Yes.

Q. And does it show the exercise of corporate controls over prescriptions being issued by a Dr. Veres?

MR. GADDY: Objection to form, scope.

A. Yes, it does.

Q. Is this something that the corporate compliance department looked at in terms of monitoring doctors and their prescription habits?

A. Yes. It's an example -- yes, absolute example.

- - -

(Tsipakis Deposition Exhibit 16 marked.)

- - -

BY MR. BARNES:

Q. Go to file 7. We'll call it Exhibit 16.

Do you recognize Exhibit 16 as a corporate business record of Giant Eagle?

A. Yes.

Q. And does it represent or show the corporate oversight of the narc audits going on at the pharmacies?

A. Yes.

MR. GADDY: Objection to form.

Q. And in this circumstance, this was for Vicodin prescriptions across multiple stores in the chain, monitoring those types of prescriptions?

A. Correct. Yes.

Q. Is this something the corporate compliance did on a regular basis in terms of monitoring opioid prescriptions across the entire chain?

MR. GADDY: Object to form.

A. Yes.

- - -

(Tsipakis Deposition Exhibit 17 marked.)

- - -

BY MR. BARNES:

Q. Go to file 8, which we'll mark Exhibit 17. I think we've seen this earlier this morning. Mr. Gaddy asked you some

questions about this.

Is this a business record of Giant Eagle, Exhibit 16 -- or I'm sorry -- Exhibit 17?

A. Yes, it is.

Q. And this involved buprenorphine at store number 54.

Do you know that store number 54 is located in Pennsylvania?

A. Yes, I do.

Q. And buprenorphine, is that a Schedule II or some other schedule opioid?

A. A Schedule III.

Q. A Schedule III. And it's an opioid treatment, correct? It's not a -- it's something you take to try and get off opioids; is that right?

A. Correct.

Q. All right. And in this circumstance, is this an example of the corporate level threshold report triggering an investigation in Pennsylvania for this Schedule III buprenorphine, including looking at things like distances and where are these prescriptions coming from? Is that right?

A. Yes, that's correct.

Q. Do you know whether this activity resulted in the reporting of a suspicious order to the DEA involving this matter?

A. This interaction and this investigation did result in a suspicious order identification and letter to the DEA.

- - -

(Tsipakis Deposition Exhibit 18 marked.)

- - -

BY MR. BARNES:

Q. And I'm going to mark -- it's one of the documents sent to you by e-mail. It's marked -- it's HBC -- the last five numbers are 74072.

Do you have that, Mr. Tsipakis?

A. Yes, I have it.

Q. And is this the suspicious order you just testified to that came out of this investigation of these Schedule III buprenorphine prescriptions in Pennsylvania?

A. Yes. It was sent to the DEA. Yes. The suspicious order was flagged to the DEA.

Q. And do you know if the DEA did anything with the suspicious order after it was sent to them on 1/21 of '16?

A. They never responded.

Q. All right. I meant to mark that Exhibit 18, that suspicious order report to the DEA dated 1/21 of '16. So if you could just put an 18 on there.

And is this a corporate business record of Giant Eagle, this Exhibit 18?

MR. GADDY: Objection; form.

A. Yes, it is.

Q. Was Giant Eagle -- did Giant Eagle view this as an example of controls working or not working?

MR. BARNES: Objection; form.

A. Controls working.

- - -

(Tsipakis Deposition Exhibit 19 marked.)

- - -

BY MR. BARNES:

Q. Okay. Go to file 9, which we'll mark as Exhibit 19.

Do you recognize Exhibit 19 as a

corporate business record of Giant Eagle?

A. Yes.

MR. GADDY: Object to form.

Q. And can you tell us what this is an example of or shows in terms of corporate controls?

MR. GADDY: Objection to form, scope.

A. This shows an interaction between pharmacists on a prescription and showing that -- utilizing the OARRS system and getting the information from the OARRS system and a prescription that was filled at another pharmacy and using the determination on ultimately whether to fill or not fill a prescription.

Q. Okay. Is this an example of the type of activity that occurred at the pharmacies with these types of prescriptions?

A. Yes.

MR. GADDY: Form, scope.

- - -

(Tsipakis Deposition Exhibit 20 marked.)

- - -

BY MR. BARNES:

Q. Go to file 10, which we'll mark as Exhibit 20.

Do you recognize Exhibit 20 as a business record of Giant Eagle, Mr. Tsipakis?

A. Yes.

Q. Is this -- this relates to oxycodone being dispensed at certain stores. Is this a corporate type oversight or control occurring involving this type of drug at Giant Eagle corporate headquarters?

MR. GADDY: Object to form, scope.

A. Yes.

Q. Is this a comparison of what the store ordered in terms of oxycodone versus what it dispensed?

A. Yes.

Q. And why even look at that? Why exercise that kind of a control?

A. It's an effective control to understand that based on the prescriptions that are being prescribed at that store, there's an amount of product that is being needed to fill those prescriptions and then what is being

ordered.

So if there's a pattern where there's more product being requested than is being required of demand from the prescriptions authorized by prescribers, then it would show a potential concern of the ins and outs being -- for lack of a better term, the ins and outs not matching or being close. They should -- they should be within -- within reason.

Q. There's references to McKesson being involved in this investigation here.

Do you see that on the bottom of page 1 --

A. Yes.

Q. -- McKesson.

Was this triggered by McKesson exercising controls over these oxycodone orders?

A. Yes. This was -- it originated from a concern from McKesson shutting off -- basically requesting more information on the amount of product being shipped to the store.

Q. Okay. And when McKesson would exercise its oversight over its order fulfillment to Giant Eagle pharmacies, would

corporate headquarters at Giant Eagle get involved?

A. Yes. We would -- we would be notified immediately from McKesson, which would kick off an investigation and a review on the facts involved, why is there an increase being asked for.

Q. All right. And is this an example of that, Giant Eagle corporate employees investigating a McKesson threshold being tripped and making sure that it was appropriate?

A. Yes, it is.

- - -

(Tsipakis Deposition Exhibit 21 marked.)

- - -

BY MR. BARNES:

Q. Go to file 11, which we'll call Exhibit 21.

Do you recognize Exhibit 21 as a corporate business record of Giant Eagle?

MR. GADDY: Form.

A. Yes, I do.

Q. And there's a reference to a red flag video being circulated by

George Chunderlik; is that correct?

A. Yes, that is correct.

Q. Was this part of his corporate compliance, pharmacy compliance duties?

A. Yes, it was.

Q. And was he asking all of the pharmacy members to rewatch a video relating to drug diversion?

A. Yes. It's an e-mail string asking if they should watch the video again, and George affirmatively saying yes, they're going to watch the video again.

Q. All right. Was that something that the Giant Eagle compliance department typically did get information out to the pharmacy team, things like videos from the Board of pharmacy, things of that nature?

MR. GADDY: Object to form.

A. Yes.

- - -

(Tsipakis Deposition Exhibit 22 marked.)

- - -

BY MR. BARNES:

Q. Go to file 12, which we'll mark

Exhibit 22.

Do you recognize 22 as a corporate business record of Giant Eagle?

MR. GADDY: Form.

A. Yes.

Q. There's a reference to this Supplylogix. You've referenced that a couple times in your deposition. Is that a computerized software system that manages and provides information about orders?

A. Yes. It's a -- it's a tool that helps us manage our orders and our order points and also a tool we can use to drill into information that we want to look at on the prescriber basis or on the -- the prescriber basis or the store basis or dispensing basis.

Q. Now, is Supplylogix -- does it provide routinely written reports, or is it more of a dashboard -- electronic dashboard type system?

A. It's more of a dashboard and a querying system.

Q. So does it have the capacity to analyze orders in different ways for different

purposes?

MR. GADDY: Objection; form.

A. Yes.

Q. Okay. And in this example, it says, "Supplylogix is starting to raise flags into the dispensing of oxymorphone, hydrochloride at Store 4008."

Is this an example of Giant Eagle corporate headquarters using the Supplylogix tool to identify and investigate opioid prescriptions?

A. Yes, it is.

Q. And in this circumstance, in the middle paragraph, it says, "Supplylogix is indicating that 59.38 percent of the prescriptions are coming from a pain clinic ran by Ashraf Razzak."

Is this an example of what the corporate compliance team would look at using Supplylogix?

A. Yes.

Q. Okay. Did you find Supplylogix to be a valuable tool at the corporate level in terms of looking at orders and making sure that

orders and dispensing were appropriate?

A. Yes.

- - -

(Tsipakis Deposition Exhibit 23 marked.)

- - -

BY MR. BARNES:

Q. Go to file 13. We'll call it Exhibit 23.

Do you recognize Exhibit 23 as a corporate business record of Giant Eagle?

MR. GADDY: Form.

A. Yes.

Q. Now, is this an example of Giant Eagle's corporate headquarters looking at orders of buprenorphine for a specific store?

A. Yes, it is.

Q. And does that analysis include looking at where the prescriptions were coming from, where the patients were coming from, and distances and things -- use of cash, things like that?

A. Yes, it is.

Q. Now, is that something that the corporate compliance department would do in its

investigations when drilling down into orders for whatever purpose, they had the capacity and the ability to look at the location where the patients were coming from, how they were paying, in cash or insurance, things of that nature?

A. Yes.

Q. And is this an example of that, how the corporate compliance team would review at a corporate level opioid prescriptions at specific stores?

A. Yes, it is.

- - -

(Tsipakis Deposition Exhibit 24 marked.)

- - -

BY MR. BARNES:

Q. Go to file 14, which we'll mark as Exhibit 24.

Do you recognize Exhibit 24 as a corporate business record of Giant Eagle?

MR. GADDY: Form.

A. Yes.

Q. And it's similar to the last exhibit. Is this an example of corporate exercising oversight and control over

buprenorphine prescriptions at a specific store?
MR. GADDY: Objection; form.
A. Yes, it is.
Q. And did these types of things occur on a regular basis at Giant Eagle in terms of corporate oversight in monitoring opioid prescriptions at the stores?
MR. GADDY: Object to form.
A. Yes.
- - -
(Tsipakis Deposition Exhibit 25 marked.)
- - -
BY MR. BARNES:
Q. Go to file 16, which we're going to mark as Exhibit 25.
A. Okay.
Q. Do recognize Exhibit 25 as a corporate business record of Giant Eagle?
MR. GADDY: Object to form.
A. Yes, I do.
Q. And can you tell us what this communication is about? It's captioned "Meeting, Script Ring."
MR. GADDY: Form, scope.

A. So this is a communication with our head of our loss prevention department, Rick Shaheen, and the FBI, so local special agent Robert Warner of the Pittsburgh FBI office. And it involves meeting to discuss a ring of forgeries in the area.

Q. It indicates in the middle paragraph that "Six UPMC physicians were being victimized by this forgery ring involving oxycodone forgeries."

Is that right?

MR. GADDY: Scope.

A. Yes, that is correct.

Q. And you mentioned earlier that Rick Shaheen and the pharmacy loss prevention often worked with agencies like the FBI and the DEA.

Is this an example of Giant Eagle's personnel working closely with the FBI to prosecute opioid criminals?

A. Yes, it is.

- - -

(Tsipakis Deposition Exhibit 26 marked.)

- - -

BY MR. BARNES:

Q. Go to file 17, Exhibit 26.

Do you recognize 26, sir, as a corporate business record of Giant Eagle?

MR. GADDY: Form.

A. Yes, I do.

Q. And can you tell us if this represents or shows more corporate oversight of opioid dispensing, including focusing on specific doctors and locations?

A. Yes, it is.

Q. The bottom paragraph on the first page references methadone being prescribed for sleep and not being appropriate and the pharmacist reaching out to the prescribing physician on numerous occasions to get the dosage changed for the oxymorphone, and the office doesn't want to change it.

Is this an example of Giant Eagle pharmacists testing the legitimacy of opioid prescriptions?

A. Yes, it is.

MR. GADDY: Form.

Q. And does this further show that

the Giant Eagle pharmacist reached out to corporate headquarters for assistance with how to respond to these types of prescriptions and what to do?

MR. GADDY: Object to form.

A. Yes, it is.

Q. And does this reference -- does this evidence Giant Eagle advising the pharmacist to exercise their professional judgment and don't fill the prescription if they think it's inappropriate?

MR. GADDY: Form.

A. Yes, it does.

- - -

(Tsipakis Deposition Exhibit 27 marked.)

- - -

BY MR. BARNES:

Q. Go to file 18, Exhibit 27.

Do you recognize this as a corporate business record of Giant Eagle?

A. Yes, I do.

MR. GADDY: Form.

Q. And is this another example of Giant Eagle corporate headquarters analyzing the

prescribing habits of a specific doctor for specific controlled substances?

MR. GADDY: Form, scope.

A. Yes, it is.

Q. Is this something that corporate headquarters did on a routine basis in terms of looking at doctors who were sending patients to Giant Eagle pharmacies?

MR. GADDY: Objection; form.

A. Yes.

- - -

(Tsipakis Deposition Exhibit 28 marked.)

- - -

BY MR. BARNES:

Q. Go to file 19, Exhibit 28.

Do you recognize Exhibit 28 as a corporate business record of Giant Eagle?

A. Yes, I do.

Q. Is this an example of what we've seen before, which is Giant Eagle corporate headquarters looking at purchases by specific stores and dispensing by specific stores?

Do you see that?

MR. GADDY: Form and scope.

A. Yes, it is.

Q. Okay. In this circumstance, this is for oxycodone; is that correct?

A. Yes, that is correct.

- - -

(Tsipakis Deposition Exhibit 29 marked.)

- - -

BY MR. BARNES:

Q. Go to file 20, Exhibit 29.

Do you recognize Exhibit 29 as a business record of Giant Eagle?

MR. GADDY: Form.

A. Yes, I do.

Q. And is this an example of Giant Eagle corporate headquarters looking at certain types of dispensing activity for controlled substances, including the use of cash or discount card payments for certain time periods for opioid prescriptions?

A. Yes, it is.

Q. Is this the type of -- another example of the type of oversight for opioid prescriptions Giant Eagle headquarters exercised over its pharmacies?

MR. GADDY: Objection to form.

Q. Did you answer that, Mr. Tsipakis?

A. Yes. The answer is yes.

- - -

(Tsipakis Deposition Exhibit 30 marked.)

- - -

BY MR. BARNES:

Q. Okay. Go to file 21, Exhibit 30.

Do you recognize Exhibit 30 as a business record of Giant Eagle?

MR. GADDY: Form.

A. Yes, it is.

Q. And is this an example of corporate oversight looking at specific stores and how they compare to the dispensing numbers for other stores in the chain?

A. File 30 you said, right, Mr. Barnes?

Q. No. File 21, Exhibit 30. Sorry.

A. Okay. Sorry. Wrong one. Excuse me.

Q. I should have used the term "file." File 21 is going to be Exhibit 30.

A. Yeah, I have it. I have it.

Q. Is this a business record of Giant Eagle?

A. Yes, it is.

Q. And is this an example of the type of corporate oversight that occurred, including looking at specific stores dispensing versus other stores in the chain?

A. Yes, it is. Comparing stores, uh-huh.

- - -

(Tsipakis Deposition Exhibit 31 marked.)

- - -

BY MR. BARNES:

Q. Go to file 22. We'll call it Exhibit 31.

Do you recognize Exhibit 31 as a business record of Giant Eagle?

MR. GADDY: Form.

A. Yes.

Q. You mentioned earlier the term "BOLO," be on the lookout. Is this a BOLO?

A. It is. It's communication from our loss prevention department to all our stores.

Q. And does it reference a forged oxycodone prescription?

A. Yes, it does.

Q. And was this forgery detected by somebody -- I guess this is a communication from the FBI and the DEA about a forgery?

MR. GADDY: Object to form.

A. This is an example of information we received that we passed on to our stores to keep a lookout for it, yes.

Q. Okay. What I was getting at is whether or not the forgery was detected at a Giant Eagle store or not, and that's why I was confused.

A. It says in there, "I provided the FBI and DEA valuable information based on the assistance from stores" -- which would be our stores -- "to help get some of these people arrested."

- - -

(Tsipakis Deposition Exhibit 32 marked.)

- - -

BY MR. BARNES:

Q. Okay. All right. Go to file 23.

It will be Exhibit 32.

Is this a business record -- Exhibit 32, is it a business record of Giant Eagle?

A. Yes, it is.

Q. There's a reference to "Controlled Substance Research," and the first paragraph mentions "General outline of the research that Jason does when a pharmacy is flagged in the HBC threshold report."

Do you see that?

A. Yes, I do.

Q. And the next couple of pages are an outline of steps taken once the flag occurs.

Do you see that?

A. Yes, I do.

Q. And looking over these steps, is that your understanding of what Giant Eagle corporate compliance did in response to a threshold being triggered either in the Giant Eagle system or in the McKesson system?

A. Yes, it is.

Q. There's a reference to multiple tools being available on the second page of this

document. Supplylogix certainly is one of them, monthly purchasing and dispensing information in number 4)a, narc audits in 4)a.i, on-hand changes, reports, things of that nature.

Are these all tools that corporate compliance used once the threshold had been triggered?

A. Yes, they are.

- - -

(Tsipakis Deposition Exhibit 33 marked.)

- - -

BY MR. BARNES:

Q. Okay. Go to file 24, which would be Exhibit 33.

Do you recognize Exhibit 33 as a corporate business record of Giant Eagle?

A. Yes, it is.

Q. And is this an example of corporate looking at the prescribing habits of a Dr. Joseph Joseph?

A. Yes, it is.

Q. All right. And the first page lists various factors that the corporate compliance looked at, including the distances

for when the scripts were filled, patients coming from West Virginia, patients traveling together. Was this something corporate compliance would evaluate when looking at the doctor prescribing habits?

MR. GADDY: Objection; form.

A. Yes, it is.

Q. And is this an example of -- just an example of these types of investigations run by Giant Eagle corporate?

A. Yes, it is.

- - -

(Tsipakis Deposition Exhibit 34 marked.)

- - -

BY MR. BARNES:

Q. Go to file 25, Exhibit 34.

Do you recognize Exhibit 34 as a business record of Giant Eagle?

A. Yes, I do.

Q. And there's a reference on the bottom of page 1 to theft of a prescription pad.

Is that a problem that pharmacies confront from time to time, that criminals steal doctors' prescription pads?

A. Yes, it is.
Q. And is this an example of Giant Eagle corporate compliance looking into a theft of a prescription pad for certain doctors, Dr. Sheldon Stryker and Dr. Matthew Paulson?
A. Yes, it is. It was information we received from a dental office telling us about the theft of the prescription pad and then us reacting to that and searching in our systems for those doctors, and then the information being passed to the stores, yes.
Q. Kind of a -- almost like a BOLO-type report, be on the lookout for these types of things?
A. Yes.

- - -

(Tsipakis Deposition Exhibit 35 marked.)

- - -

BY MR. BARNES:
Q. Go to file 26, which we'll call Exhibit 35.
Is 35 a business record of Giant Eagle?
MR. GADDY: Form.

A. Yes, it is.

Q. Is this an example of Giant Eagle corporate compliance getting involved with pharmacists who are triggering further investigation for customers coming from out of town locations?

A. Yes, it is.

Q. And in this example, this is triggered by a pharmacy team leader saying, "Rick, I had two customers come in tonight with Youngstown, Ohio addresses, both new customers with tramadol prescriptions from this podiatrist.

"I called 1435, and they ran an OARRS for me. Both had history of lots of tramadol. My tech called Belmont Avenue, and they verified he is someone we don't want to fill prescriptions from. Just wanted to let you know."

Is this an example of a Giant Eagle pharmacist refusing to fill prescriptions by people coming from unusual locations asking for opioids?

A. What this shows is a pharmacist

getting a data point or a flag, and even with a system limitation of not being able to look at a PDMP, asking another store to get the information they needed to follow up and not fill a prescription. Yes.

Q. Okay.

- - -

(Tsipakis Deposition Exhibit 36 marked.)

- - -

BY MR. BARNES:

Q. All right. Go to file 27, Exhibit 36.

Do you recognize Exhibit 36 as a business record of Giant Eagle?

A. Yes, I do.

Q. Is this another BOLO being issued, this time about two Ohio stores and a certain type of drug?

A. Yes, it is.

Q. Again, more communication across the chain regarding things to look for, be on the lookout?

A. Yes, it is.

- - -

(Tsipakis Deposition Exhibit 37 marked.)

- - -

BY MR. BARNES:

Q. Go to file 28, Exhibit 37.

Do you recognize Exhibit 37 as a business record of Giant Eagle?

A. Yes.

Q. If you look at the bottom of this e-mail chain, it appears that it was triggered by some inquiries by a Giant Eagle pharmacist concerning a prescription for Percocet or generic Percocet. It begins, "Hi, Angela."

Was Angela the pharmacy team leader's PDL?

A. It's our pharmacy district manager for the store, correct. Yes.

Q. It says, "I spoke with a doctor regarding a patient who has continually exhibited red flags regarding prescriptions. One of the flags that the patient exhibits, and I explained to the doctor, was he in the past asked for 512 brand of generic Percocet. The doctor asked that we do not dispense the 512 brand which is our preferred brand of generic

Percocet.

"During my conversation, the doctor -- she stated that he had asked for brand name Percocet from her, and she felt as though the patient was diverting the medication and asked that we change the quantity from 30 to 20 tabs, which I did document on the Rx mainly because the doctor did not want the patient to return to the office to pick up another hard copy.

"The patient became very upset when I explained this to him and wanted the prescription back, which I was not comfortable doing since we documented the changes on the Rx and note to not dispense the 512 brand.

"Knowing that the doctor feels as though the patient is diverting their medication, I am not comfortable at all dispensing the prescription with another manufacturer from the 512 brand.

"Unfortunately, in this situation, the patient has been restricted to Giant Eagle pharmacy by the Ohio Medicaid Pharmacy Coordinated Service Program Information for

Pharmacies.

"Are we able to completely refuse to fill a prescription even with a different manufacturer and hand the prescription back to the patient even with the documented changes?

"Is it possible to contact the state and opt out of the program for being the preferred pharmacy knowing that he may be diverting controlled substances."

Does this strike you as an unusual circumstance --

A. Yes.

Q. -- in any way, Mr. Tsipakis?

How so?

A. It's unusual from a standpoint of the pharmacist identifies a red flag, is uncomfortable about the red flag, discusses it with the physician. The physician agrees with the concern that the pharmacist has, but still authorizes the prescription or still is okay with the prescription being filled and putting the pharmacist in a difficult position of what's described there, and then the follow up with -- above it with our district manager and

conferring with our loss prevention department on next steps.

Q. And what did the PDL, Angela Garofalo tell this pharmacist who was put in this position with a doctor saying, "I issued the prescription, but I think the patient is diverting?" She asks around, and what is she told by Giant Eagle higher-ups?

A. She's told, "Regarding the Ohio State Board of Pharmacy rules, you can deny filling a prescription for a patient," and basically tells her to use her judgment. She absolutely can refuse to fill this prescription.

Q. Okay. And then up above, it says, "After speaking with Rick Shaheen, we have determined that we have a responsibility to reach out to the State Board of Pharmacy agent and provide him with all of this information.

"My concern is that if the M.D. feels the patient may be diverting meds, why are they still writing them scripts? Please contact your local board agent, Trey Edwards."

And then up above, it says, "The doctor did mention this would be the final

prescription, but I was a little weary that she was still allowing this one filled."

So in this circumstance, the doctor is saying, "I've issued the script all right, but the patient is diverting it, but please go ahead and fill it."

Why does that put the pharmacist in a bad position?

A. It puts the pharmacist in a bad position because for the -- we have no evidence that they're diverting or not diverting, and also drastically cutting someone off of an opiate, it poses a safety concern to the patient, which my assumption is why the physician is trying to give them one more prescription in their medical judgment.

But it puts us in the position of not having an aligned front between us and the prescribing physician and then having to basically go to a higher level to report this. And basically it's the pharmacist reporting the physician, which obviously creates an uncomfortable situation.

Q. And so in this circumstance, it

appears that Ohio -- or I'm sorry -- Giant Eagle contacted the Ohio Board of Pharmacy agent Trey Edwards?

A. Yes.

Q. Do you know how this was resolved after this?

A. I do not.

Q. You don't? Okay.

- - -

(Tsipakis Deposition Exhibit 38 marked.)

- - -

BY MR. BARNES:

Q. Go to file 29, Exhibit -- we'll call it Exhibit 38.

Is this a business record of Giant Eagle?

MR. GADDY: Object to form.

A. Yes.

Q. And does this evidence an incident in which a Giant Eagle pharmacist detected a prescription that was written for a deceased patient?

A. Yes, it is.

Q. There's a reference in the second

paragraph to the third party rejected. Is that the insurance rejection?

A. Yes. That's my assumption. Yes.

Q. Do the insurance companies have a role in the dispensing process in terms of exercising control on their own independent of anybody else?

MR. GADDY: Form, scope.

A. It's an added control. It's certainly an added data point. If that prescription had -- if a prescription for the same item has been filled somewhere else, the insurance would reject paying twice for the same medication. So it would reject.

Q. Okay. So here the insurance rejected, and the e-mail appears to be summarizing what the pharmacist did in terms of insisting upon identification, calling a Rite Aid pharmacy, letting them know the situation and then calling the Warren police?

A. Yes, that is correct.

Q. Okay. Is this an example of a pharmacist exercising due diligence on a prescription and refusing to fill it?

A. Yes, it is.

- - -

(Tsipakis Deposition Exhibit 39 marked.)

- - -

BY MR. BARNES:

Q. Go to file 30, which we'll call Exhibit 39.

A. 30. Okay.

Q. This is Exhibit 39. Is this a business record of Giant Eagle?

MR. BARNES: Object to form.

A. Yes, it is.

Q. And is this a --

MR. KOBRIN: This is the one we wanted to supplement, Jim, an e-mail from earlier with additional information. So this is the other e-mail document I sent you, Jeff. Does that make sense?

MR. GADDY: Okay.

MR. BARNES: Just to be sure, this is a three-page document with writing on all pages except the last one, double-sided, beginning with Bates stamp

GE00835 on all three pages.

MR. GADDY: Mine is a five-page.

THE WITNESS: Yeah, mine is too.

It starts with pharmacy hot sheet, Giant Eagle pharmacy hot sheet.

MR. GADDY: The first page of mine is an e-mail from a pharmacy team lead to Rick Shaheen, "Subject: Fake Prescriptions."

MR. BARNES: Right, right.

BY MR. BARNES:

Q. Jim, your pharmacy hot sheet is my last page. Do you have other pages?

A. Yeah, it might be jumbled on how it was printed, so I apologize.

MR. KOBRIN: I'm not sure we all have the same page order in the same document.

MR. BARNES: Page 1 is going to be the e-mail from 1405 pharmacy team leader, 10:41, to Rick Shaheen, "Subject: Fake Prescriptions."

MR. KOBRIN: Let's take like a two-minute break and make sure we have

this right. Is that all right?

MR. GADDY: It should just be in the order of the Bates numbers on the bottom right-hand corner; 53, 54, 55, 56, 57, if that makes sense.

THE WITNESS: Yes. I mean, I have the -- I have it. It's just -- mine is cut off in the corner, and I can't see the Bates, the last digits.

BY MR. BARNES:

Q. Jim, so the cover of Exhibit 39 will be this e-mail.

A. Yep, I have it. I have it.

Q. The second page is two prescription copies.

A. Yep.

Q. The third page is a fax cover sheet. The fourth and fifth pages are a prescription cover and then a pharmacy hot sheet.

A. Yes, I have it.

Q. All right. All together, those are -- that's Exhibit 30.

Do you recognize these as

corporate business records of Giant Eagle?

A. Yes, I do.

Q. And does this reference Rick Shaheen and a pharmacy team leader communicating about a fake prescription?

MR. GADDY: Object to form.

A. Yes, it is.

Q. And is this an example of a Giant Eagle pharmacist exercising due diligence spotting a fake prescription and calling Rick Shaheen and the local police?

A. Yes, it is.

Q. That's all I have on Exhibit 39.

- - -

(Tsipakis Deposition Exhibit 40 marked.)

- - -

BY MR. BARNES:

Q. File 31, Exhibit 40.

Do you recognize Exhibit 40 as a corporate business record of Giant Eagle?

A. Yes, it is.

Q. Is this another example of a be on the lookout fraudulent promethazine with codeine scripts?

A. Yes, it is.

- - -

(Tsipakis Deposition Exhibit 41 marked.)

- - -

BY MR. BARNES:

Q. Okay. Go to file 32, Exhibit 41.

Is this a business record of Giant Eagle?

MR. GADDY: Form.

A. Yes, it is.

Q. Another example of a be on the lookout, Phenergan with codeine forged prescriptions in the area, be on the lookout?

A. Yes, it is.

MR. GADDY: Scope.

- - -

(Tsipakis Deposition Exhibit 42 marked.)

- - -

BY MR. BARNES:

Q. File 33, Exhibit 42.

Do you recognize Exhibit 42 as a business record of Giant Eagle?

MR. GADDY: Form.

A. Yeah, I do.

Q. And what does this Exhibit 42 reference, Mr. Tsipakis?

MR. GADDY: Form, scope.

A. So this shows an e-mail communication actually following up on a case that we had provided information. So it's a link to the case that we gave information to the DEA and FBI over a year ago, and basically applauding the efforts of our teams for the BOLOs that we put out and utilizing our due diligence in resulting in getting this individual or individuals arrested.

A large supplier of oxycodone, this person named Barry Dorsey, that was the head of an oxycodone ring in our Pittsburgh area, and basically congratulating our efforts in leading to those arrests and getting him and those drugs off the street.

Q. It references Giant Eagle providing video to the federal agents as part of this prosecution; is that correct?

MR. GADDY: Scope.

A. It does, yes.

Q. Okay.

A. Basically it all started with us getting a call from the store about a bad script that led all the way up to -- for over a year, to the prosecution of these actors.

- - -

(Tsipakis Deposition Exhibit 43 marked.)

- - -

BY MR. BARNES:

Q. Okay. Go to file 34, which we'll call Exhibit 43?

Is Exhibit 43 a business record of Giant Eagle?

MR. GADDY: Form.

A. Yes, it is.

Q. Does this reference the summary of the efforts of the pharmacy loss prevention department for fiscal year 2018?

A. Yes, it does.

Q. Down below it says, "Loss Prevention Wins." Second to last bullet point, "Continued working partnership with the DEA, AG, FBI, Ohio Pharmacy Board, local and state police, U.S. attorney, and FBI acknowledge our efforts in drug diversion cases."

Is that your understanding, that Giant Eagle's pharmacy loss prevention department worked with all of those law enforcement agencies on a continual basis to combat diversion, including diversion of opioids?

MR. GADDY: Objection to scope.

A. Yes. We have a strong collaboration with all those agencies and continue to have strong collaboration with them today.

Q. Up above in the second paragraph, there's a reference to electronic perpetual controlled substance II logs that helps identify when those drugs are missing or short.

Is that another type of control that Giant Eagle had, electronic perpetual inventories for controlled substances, Schedule IIs, to constantly monitor those products?

MR. GADDY: Objection to form.

A. Yes. That's part of our continuing -- our continuous improvement process. And not what's required. This is

above and beyond what is required. But our efforts to simplify things for our pharmacies and certainly continue to keep a pulse on our controlled substances, so an effort to continue improving the diligence.

- - -

(Tsipakis Deposition Exhibit 44 marked.)

- - -

BY MR. BARNES:

Q. All right. Go to file 36, which we'll call Exhibit 44.

Do you recognize this as a corporate business record of Giant Eagle?

MR. GADDY: Objection to form.

A. Yes, I do.

Q. And what does this record -- this business record evidence?

MR. GADDY: Form, scope.

A. It summarizes an interaction between one of our pharmacy team leaders and the DEA investigator. It memorializes the conversation that was had.

Q. Is that an important event for Giant Eagle when one of its pharmacists meets

with a DEA investigator?

MR. GADDY: Form and scope.

A. Yes, it is.

Q. And in this circumstance on the bottom of page 1, there's a reference to "Doctors were upset that the pharmacies, Giant Eagle, CVS, Rite Aid mentioned, and that pharmacists were refusing to fill prescriptions."

Is that something that Giant Eagle experienced when it refused to fill prescriptions, people would complain, like doctors and patients?

MR. GADDY: Form and scope.

A. Yes. Certain doctors would get very upset with us questioning and asking for more information, and in some cases would file a complaint, which it appears to be this is pursuant to a complaint that the doctor filed against Giant Eagle and its pharmacists.

Q. And at the very end of this summary of this meeting with this DEA agent, what does this memorialize the DEA agent advised the Giant Eagle pharmacist to do?

MR. GADDY: Form and scope.

A. It basically says that -- in reading this and summarizing this, he did his investigation pursuant to what he needed to do. He said that "Things take many months to happen and that facts on this particular case may be something that will proceed to court and to keep doing what you're doing. Keep fighting the good fight."

Q. And what was Giant Eagle's response to that when a DEA agent says, "Keep doing what you're doing"? What did Giant Eagle take that to mean?

MR. GADDY: Objection to form and scope.

A. We took this as this was a positive meeting reinforcing that our efforts and how our pharmacists are acting and continuing in our safeguards and controls and -- are working, and, in essence, being applauded by the investigators in question.

- - -

(Tsipakis Deposition Exhibit 45 marked.)

- - -

BY MR. BARNES:

Q. Okay. Go to file 37, Exhibit 45.

Is this a business record of Giant Eagle, Exhibit 45?

A. Yes, it is.

Q. And does it reference a Giant Eagle pharmacy detecting what it believed were fraudulent prescriptions for promethazine and Norco?

A. Yes, it is.

Q. Down at the bottom, there's an indication that the pharmacist detected that the address and phone numbers for the alleged prescriber were not on the hard copy. The correct phone number is as indicated, but a different number was on the script, and further recognizing that this was an OB-GYN for out of town doctors.

Is this an example of Giant Eagle pharmacists exercising due diligence to detect fraudulent prescriptions?

MR. GADDY: Form and scope.

A. Yes.

Q. Now, is it your experience,

Mr. Tsipakis, that the mere fact that a pharmacist may detect and think that there's a red flag, but it actually turns out that there's not a red flag, that the prescription is actually legitimate?

A. Yes, that does happen.

MR. BARNES: Object to form.

Q. In fact, that's exactly what happened here, right? Up above it says that local police were contacted. They did an investigation. It turned out it wasn't a forgery, correct?

A. That is correct.

Q. So this is an example of a red flag being totally wrong. It was actually a legitimate prescription.

Correct?

A. This was a legitimate prescription. After all the diligence was done and all the investigation, it was found to be, yes, the prescriber actually did write this prescription.

Q. Is that something that the pharmacist has to take into account that what he

may think is a red flag is actually not a red flag and it's actually a totally legitimate prescription?

A. It's a consideration, yes.

- - -

(Tsipakis Deposition Exhibit 46 marked.)

- - -

BY MR. BARNES:

Q. Go to file 38, which we'll call Exhibit 46.

A. Sorry. Which number, Mr. Barnes?

Q. File 38. We're going to call it Exhibit 46.

A. Okay.

Q. Is this a corporate business record of Giant Eagle?

A. Yes, it is.

Q. And is this another example of the pharmacy loss prevention department summarizing its activities for 2019?

MR. GADDY: Objection to form, scope.

A. Yes, it is.

Q. Again, emphasizing they're working

with multiple law enforcement agencies, various task force, constant communications with the Board of Pharmacy, and the Attorney General offices.

Am I reading these correctly?

MR. GADDY: Same objections.

A. Yes. You are reading them correctly. And of note -- and I remember in particular near the bottom, it talks about individuals being arrested in our parking lot for selling their Percocet to other individuals. So an example, as we testified earlier, of prescriptions being dispensed and then patients diverting those and then getting arrested.

Q. Was that an investigation and were those arrests the result of Giant Eagle calling in law enforcement?

A. Yes, it was.

MR. GADDY: Form.

A. It was a multi-month, if not years, of investigation that led to an arrest.

Q. There's references to Giant Eagle working on providing information to the federal drug task force investigating cases regarding

the opioid crises.

Do you see that?

A. Yes.

Q. It says, "As a result, several licensed medical practitioners have been arrested for either overprescribing or medically unnecessary controlled substances."

So does that indicate that Giant Eagle's loss prevention department was actively working with the federal drug task force investigating the opioid crisis?

MR. GADDY: Objection; form and scope.

A. Yes, we were actively involved.

Q. And do you know, Mr. Tsipakis, at any time Giant Eagle was working on a federal drug task force investigating the opioid crisis whether anybody on that task force or any other law enforcement agency challenged Giant Eagle's participation and said, "Well, you guys don't deserve to participate because you're doing something wrong at your own pharmacies"?

MR. GADDY: Objection to form and scope.

A. No, never.

Q. And for that matter, in all of the contacts with law enforcement and Board of Pharmacy, police that we've seen, did anybody from Lake or Trumbull County law enforcement or otherwise ever complain about Giant Eagle's dispensing practices?

MR. GADDY: Form and scope.

A. No, never.

- - -

(Tsipakis Deposition Exhibit 47 marked.)

- - -

BY MR. BARNES:

Q. Go to file 39, which we'll call Exhibit 47.

Is this a business record of Giant Eagle?

A. Yes, it is.

Q. Is this another example of the be on the lookout notification sent out by Rick Shaheen, Giant Eagle's pharmacy loss prevention department, and in this example, fake prescriptions attempting to being passed in a certain area?

MR. GADDY: Form, scope.

A. Yes, it is.

Q. Okay. Now, Mr. Tsipakis, in Giant Eagle's circumstance, it has control over both the distribution from its own warehouses and dispensing from its own pharmacies; is that correct?

MR. GADDY: Objection to form, scope.

A. Yes.

Q. Was that a yes, Mr. Tsipakis?

A. Yes, that is correct.

Q. Okay. And so product that came out of the Giant Eagle warehouses were in constant control of Giant Eagle even when they arrived at the pharmacy and all the way to the point of dispensing; is that correct?

A. Yes, that is correct.

Q. And, Mr. Tsipakis, I think you testified a little bit about this, but the Ohio Board of Pharmacy inspected the Giant Eagle pharmacies in Ohio hundreds of times.

Are you aware of that?

MR. GADDY: Form and scope.

A. Yes, I am aware of that.
Q. And was Giant Eagle ever suspended -- was its license ever suspended or revoked for any alleged violation of the Ohio or federal drug laws?
MR. GADDY: Same.
A. No.
Q. As a result of those inspections or otherwise?
MR. GADDY: Same objections.
A. No, never.
Q. You were asked some questions in your last deposition about so-called cocktail drugs.
Do you remember that, Mr. Tsipakis?
A. Yes.
Q. In your experience, are cocktail drugs written for legitimate medical reasons by doctors?
MR. GADDY: Objection; form.
A. Yes.
Q. Are those types of prescriptions evaluated as part of the DUR process?

A. Yes. Absolutely.

Q. You were asked some questions in your last deposition about how busy are Giant Eagle stores. Mr. Mougey asked you, for example, did Giant Eagle stores do approximately 6,000 prescriptions a week.

Do you remember that line of questioning?

A. Yes, I do.

Q. And what's the actual average number of prescriptions filled by Giant Eagle stores?

A. Our average prescriptions per store is roughly 23-, 2400, and that's for total prescriptions. Controlled substance prescriptions, all schedules, are less than 9 percent of that number.

Q. And is that a -- does that percentage mean anything to you in terms of how big or small or right on where it should be? What does that mean, 9 percent? Less than 9 percent of Giant Eagle's total prescriptions were controlled substances.

MR. GADDY: Objection; form,

scope.

A. From the DEA view and from experience, a typical pharmacy on controlled substances is roughly 20 percent. So this would indicate that we're half of -- roughly less than half of the normal average that the DEA states is average across registrants.

Q. Which is an indication of what to you?

MR. GADDY: Object to form.

A. That we don't fill -- that we don't fill as many controlled substances as other -- as other pharmacies, and that people that are trying to pass prescriptions as was described, forged prescriptions or other prescriptions, they just don't come to us.

Q. All right. But getting back to -- so 23- to 2400 average, less than 9 percent are controlleds. Do your stores -- how many -- how many on average pharmacists does a typical Giant Eagle pharmacy have on -- under employment working at a pharmacy?

A. So at a particular pharmacy, depending on the volume, we could have anywhere

from three to six pharmacists on during a day shift.

Q. So that workload of 2300 to 2400 prescriptions, less than 9 percent are controlled substances, that would be spread out between three to six pharmacists working throughout the day?

A. Yes, that's correct. A little less during the weekends, but during the week, full hours, yes.

Q. And the other 81 [sic] percent of the prescriptions, besides the 9 percent or so that are controlleds, are these just regular prescriptions like amoxicillin and the run-of-the-mill-type prescriptions?

A. They're non-controlled or scheduled drugs.

Q. Do controlled prescriptions usually require more time for the pharmacists when they come in -- even if it's only 9 percent or so of their workload, do pharmacists tend to spend more time on controlled substance prescriptions?

A. Yes.

MR. GADDY: Form, scope.

Q. Is a lot of due diligence performed by Giant Eagle pharmacists not written down?

MR. GADDY: Objection to form.

A. Yes.

Q. And why is that? Why wouldn't Giant Eagle require pharmacists to write down each and every thing they consider as part of the due diligence process?

A. There's no requirement to document such interactions or documentation, but also it's the professional judgment and the discretion of the pharmacists on if they need to or if they need to communicate something or if they need to -- for example, an insurance reason need to put something in the computer or put something on the hard copy.

Q. Do pharmacists have -- as they gain experience, especially at a pharmacy, do they develop relationships with the patients such that they would know what their past history is of prescriptions at the pharmacy and what the condition being treated is?

MR. GADDY: Objection to form.

A. Yes.

Q. And is that something that pharmacists typically write down every time, or is that something they carry in their head and based upon the patient relationship, they already know it and they will fill the prescription knowing that it's appropriate already?

MR. GADDY: Same objections.

A. Certainly a pharmacist that's at a store, a regular -- you get to know your clientele and your patients, and as a pharmacist myself, you know those patients and you know their history and you know their disease states.

Q. You were asked some questions at the last deposition about a so-called manual. This was Exhibit 2 of your first deposition.

Do you remember this manual?

A. Yes.

Q. All right. And I just had some follow-up questions.

You've already told us that the DEA manual was used by Giant Eagle throughout

this time period in those controlled substance boxes that we went over.

This Exhibit 2 I think you testified was never passed or effectuated as a policy at Giant Eagle. Was that due in part to the fact that you were already following the DEA manual?

MR. GADDY: Objection to form.

A. Yes.

Q. And are some or all of the portions of this Exhibit 2 -- were they already in place in other locations at the Giant Eagle pharmacies in other policies, for example, and in the guidelines, things of that nature?

A. Yes, they were.

Q. Okay. Does it concern you at all that there was a draft of a manual on Giant Eagle's computer system that was never effectuated, or is that something that you've seen before?

MR. GADDY: Objection to form.

A. No, not concerned and I've definitely seen drafts of things that we started, created, or were not published.

Q. Did the DEA or the Ohio Board of Pharmacy ever require that Giant Eagle adopt this manual as its own manual at any time?

MR. GADDY: Form.

A. No, never.

Q. In fact, did they require Giant Eagle to adopt any specific manual at any time?

A. No, never.

MR. KOBRIN: Bob, can we take a break wherever it's convenient?

MR. BARNES: Yeah, we can take a ten-minute break.

I probably only have about ten more minutes, Jeff.

MR. GADDY: Okay. Thanks.

THE VIDEOGRAPHER: Stand by. The time is 1:50 p.m. Off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 2:03 p.m. Back on the record.

BY MR. BARNES:

Q. Mr. Tsipakis, you were asked some questions about a series of exhibits, and I

tended to ask you if they were a business record of Giant Eagle.

Do you remember all multiple times I asked you those questions?

A. Yes, I do.

Q. In that regard, I want to break that down. Were the records that you testified to as being business records, were they made at or near the time that they were transmitted by somebody with knowledge of the information contained therein?

A. Yes, they were.

MR. GADDY: Object to form.

Bob, I can't imagine we're going to have a dispute about this. I just --

MR. BARNES: Oh, you're not? Okay.

MR. GADDY: I don't think we will. I just -- half the time I hadn't gotten the folder open before he was answering the question.

MR. BARNES: Well, I'm going to finish.

BY MR. BARNES:

Q. And, Mr. Tsipakis, when you testified that those documents, those exhibits, were business records, were they -- did you mean that these records were kept in the ordinary course of business by Giant Eagle pursuant to regularly conducted business activity of Giant Eagle?

MR. GADDY: Object to form.

A. Yes, they were.

Q. And was it a regular practice of Giant Eagle to keep those records?

MR. GADDY: Objection; form.

A. Yes, it was.

Q. And was that what you meant when you said that they were business records of Giant Eagle?

MR. GADDY: Same.

A. Yes, it is.

Q. You testified in your first deposition about the corresponding obligation of Giant Eagle pharmacists.

To your understanding, is that an obligation of the pharmacist or the pharmacy?

MR. GADDY: Object to form.

A. The pharmacist.

Q. And then you also testified regarding the sometimes scanning of hard copy prescriptions.

Do you recall that testimony?

A. Yes, I do.

Q. In what circumstance would a hard copy prescription be scanned or not scanned? What determined those scanning parameters?

MR. GADDY: Object to form.

A. All the prescriptions, hard copies, are scanned into the computer system.

Q. Has that always been the case, or did it start at a certain point in time?

A. I'm not sure exactly when it was started. Certainly it was after an enhancement in the pharmacy computer dispensing software allowing images to be stored electronically in the computer.

Q. Okay. And I think you said insurers require hard copy scanning for reimbursement; is that correct?

A. Yes. I believe what I said is

there's certain insurance -- from an audit perspective on insurance, notes need to be physically on the hard copy. It doesn't matter if they're in the computer system. They have to be on the hard copy. So there's occasions that we need to pull the hard copy and document.

I believe the example I used on testing strips. So for Medicare, Medicaid, the directions of use, if we get a prescription that says use as directed and we quantify what that means, testing once a day, twice a day, three times a day, that needs to be, in essence, put on the prescription, hard copy.

Q. Okay. In these 30 or 40 examples, these exhibits we went over -- I'll call them corporate controls and pharmacy due diligence -- was it a regular practice of the Giant Eagle corporate compliance department to respond to pharmacists' inquiries when they had concerns about potentially bad scripts and to do investigations and to help the pharmacies and the pharmacists resolve them?

MR. GADDY: Objection to form.

A. Yes. Absolutely. These were

examples of an ongoing and continual even to this day process, that basically the interactions between corporate resources, the stores, loss prevention and a regular course and normal course of business and oversight.

Q. Okay. And over the years, have various personnel been involved in these activities, some of whom are no longer employed by the company?

A. Yes, that is correct.

Q. And Giant Eagle's record retention policies, would some of those records likely have been destroyed after people left and a number of years had passed since their leaving?

MR. GADDY: Form, scope.

A. Yes. There's -- the servers automatically -- for example, Outlook will delete after so many days for space reasons and other things. So there is -- there is normal processes that happen that eliminate documentation over the -- especially if the time has lapsed, yes.

Q. Okay. And you were asked earlier this morning by Mr. Gaddy of what other controls

were there over dispensing besides the threshold reports.

Do you remember that line of questioning?

A. Yes, I do.

Q. And have we covered, to your recollection, the numerous other controls over dispensing that exist at the Giant Eagle pharmacies and existed at these pharmacies throughout the time period, such as inventory controls and software controls and audit controls, and all those other types of controls?

MR. GADDY: Objection to form.

A. Yes, we have.

MR. BARNES: I've got nothing further.

- - -

RECROSS-EXAMINATION

BY MR. GADDY:

Q. Mr. Tsipakis, you were asked some questions earlier by Mr. Barnes about the job or the duty of the pharmacist, and he would talk about the job or the duty of the pharmacist in comparison to maybe other medical professionals,

like the doctor.

Do you recall that generally?

A. Yes, I do.

Q. You don't dispute the fact that the pharmacy and the pharmacist have a corresponding responsibility, correct?

A. The pharmacist has a corresponding --

MR. BARNES: Object to form.

A. -- responsibility.

Q. Let's look at Exhibit Number 1, which is P-HBC-28, which is the controlled substance dispensing guidelines.

Let me know when you have those, Mr. Tsipakis.

A. I have it.

Q. And you see at the top of the first page -- this is a Giant Eagle policy, right?

A. Yes, it is.

Q. Okay. And the very first section of this document, it states the purpose, correct?

A. Yes.

Q. And it says, "The purpose of this document is to provide the guidelines for the proper dispensing of controlled substances that support the corresponding responsibility mandate placed upon pharmacists to exercise due diligence in the decision to fill or not to fill a controlled substance prescription."

Correct?

A. Correct.

Q. And you'll agree that that is an obligation in the decision that the pharmacist has to make every time they're presented with a prescription, correct?

MR. BARNES: Object to form.

A. Yes. Pharmacists use their due diligence and professional judgment to fill -- to decide whether to fill or not fill a prescription.

Q. Right. But every time they fill a prescription, they have to make that independent decision of whether or not that prescription should be filled or should not be filled, correct?

A. Yes. Correct.

Q. When you were talking about the job and the duty of the pharmacist and differentiating it from the doctor, you weren't trying to run away from this corresponding responsibility that the Giant Eagle pharmacists have, were you?

A. Absolutely not.

Q. That's an obligation and a duty that they have today and that they've had since the time that you first started filling prescriptions as a pharmacist, correct?

MR. BARNES: Object to form.

A. Yes, that's correct.

Q. And as outlined in this Giant Eagle policy, the pharmacist must exercise due diligence in making that decision, correct?

A. Due diligence and their professional judgment, yes, correct.

Q. Now, Mr. Barnes also asked you some questions about red flags and where some of that language comes from, and he asked you about Ohio regulations and those types of things.

Do you recall that generally?

A. Yes.

Q. Do you recall that the DEA has made clear that pharmacists are supposed to be on the lookout for red flags?

MR. BARNES: Object to form.

A. The DEA has not changed any of their rules according to -- in relation to red flags. They've published certain memos or putting things on their website. The rules are the same, but certainly they have given -- it's not guidance. It's basically giving information on things to look out for or data points to be aware of.

Q. Mr. Tsipakis, do you agree that the DEA has told pharmacies, like Giant Eagle, that there are certain red flags that must be considered as part of due diligence?

MR. BARNES: Object to form.

A. The DEA has provided certainly examples of red flags to be considered when filling prescriptions, yes.

Q. More than just guidance. They've given a list of red flags that must be considered by the pharmacists when filling prescriptions, correct?

MR. BARNES: Object to form. He already said it wasn't guidance.

A. There is no -- there is no DEA rule that I am aware of that prescribes these red flags and this is what you need to do with these red flags and this is how you need to clear those red flags.

Q. Mr. Tsipakis, do you agree that the DEA has told pharmacies like Giant Eagle that there are red flags that must be considered as part of the due diligence process?

MR. BARNES: Objection; asking him to speculate about what the DEA might have told other pharmacies.

A. Again, the red -- the DEA has put information out on things it considers red flags and things to consider when filling a controlled substance prescription.

Q. And you'll agree that pharmacists should be on the lookout for red flags when filling controlled substance prescriptions, correct?

A. Pharmacists should be on the lookout of all red flags for all prescriptions,

not just controlled substance prescriptions, but for all prescriptions.

Q. And, in fact, on the second page of this controlled substance dispensing guideline that Giant Eagle put out in 2013, about two-thirds of the way down the page, Giant Eagle outlines these red flags.

Do you see that, where it says "Appropriateness of Controlled Substance Prescriptions"?

A. Yes.

Q. And it says there in that first line, it says, "The DEA in a written opinion suspending a licensed pharmacy for failure to exercise the appropriate follow-up with regards to the dispensing of controlled substances identified ten red flags that must be considered as part of the due diligence by the pharmacist in evaluating whether to fill a prescription."

Do you see that?

A. Yes, I do.

Q. And do you agree with that statement that Giant Eagle chose to include in their dispensing guidelines in 2013?

A. Yes. We included them.
Q. And you're not running away from the fact that there are red flags that pharmacists should be on the lookout for and should consider and should dispel before filling prescriptions for controlled substances, correct?
A. Correct. I'm not running away from anything.
Q. Okay. Now, pharmacists are also required to document any due diligence that they perform in order to dispel red flags, correct?
MR. BARNES: Object to form.
A. There is no legal requirement that requires a pharmacist to document any due diligence around red flags.
Q. Are Giant Eagle pharmacists required to document any due diligence that they perform to dispel red flags?
MR. BARNES: Objection; asked and answered. I also object to form.
A. Our pharmacists use their professional judgment and discretion on when they need to document things that they need to

document, and they do so.

Q. Mr. Tsipakis, if we look at the third page of the controlled substance dispensing policy about two-thirds of the way down the page, there's a section entitled "Documentation."

Do you see that?

A. I'm sorry. Which page?

Q. Page 3 of the guidelines.

A. Yes, I see it.

Q. And do you see there it says, "The pharmacists must document the steps they have taken to verify questionable prescriptions, including any calls to the prescriber, conversations with the patient, medication history review, and notate on the prescription itself or in the computer system utilizing the appropriate notes field."

Do you see that?

A. Yes.

Q. This guideline that Giant Eagle sent to its pharmacists back in July of 2013 doesn't say "Use your judgment about whether or not to document your due diligence." It says

they must document the steps.

Correct?

A. That is what it says here, but certainly --

Q. And if you have a pharmacist who is --

MR. BARNES: Hold on. Hold on. He didn't finish his answer.

Q. I'm sorry, Mr. Tsipakis. I didn't mean to interrupt you. Were you still --

A. So if you're saying that's what it says on the line, what's implied here is for the pharmacist to document in the areas that we've provided them, whether it's in the computer system, on the hard copy, the items that they deem in their discretion that they need to document, because a red flag -- there is no -- there is no -- there's no one size fits all.

So certainly a red flag to one pharmacist may not be a red flag to another pharmacist, because I know the patient or I know where they live or I know where they're coming from. I know what the situation is.

So there is -- that's where the

discretion comes in on what pharmacists need to document or not, depending on the red flag or the situation.

Q. Can you point me to where in the documentation section it tells pharmacists they can use their discretion on whether or not to document the steps that they took to verify a prescription.

A. In the practice of pharmacy, documentation is a discretion. There's a discretion on where I document things I need for insurance purposes, things I need for refills, things I need to follow up with physicians. So there's discretion that is used.

Q. Is there anywhere on this policy where Giant Eagle is telling their pharmacies that it's up to them whether or not they document the steps that they take to verify a prescription, or does this document tell them that they must do that?

A. This document simply outlines dispensing guidelines, best practices, and things they should be aware of when filling a prescription for a controlled substance.

This does not -- this does not override their professional judgment. This does not override their training. This does not override any of that.

This is just certainly a guideline to help them, to point things out, and certainly from a documentation process, they have abilities to document in multiple places within the computer system, the hard copy, dispensing record, et cetera.

Q. I'm just a little confused, Mr. Tsipakis.

Does it or does it not say that the pharmacist must document the steps they've taken? Does it say that?

MR. BARNES: Objection; asked and answered.

A. If you're asking me to read what the line on page 3 says, yes, it says, "The pharmacist must document the steps they have taken to verify questionable prescriptions."

Q. Okay. And then in the bullet points below, it gives some additional information that it says must be included. It

says, "This documentation must include," and it gives some additional information that must be included when they document the steps they've taken.

Do you see that? Are we on the same page there?

A. Yes. This is no different when we take a new prescription over the phone on who the prescriber was, who the nurse was who called it in, what time did they call it in, what date did they call it in.

So this is all very common on what a pharmacist is aware of to document or when not to document.

MR. GADDY: Move to strike as nonresponsive.

BY MR. GADDY:

Q. Now, we see at the bottom of every page the date that this was created, July 22, 2013, correct?

A. Correct.

Q. And you agree there was no written Giant Eagle controlled substance dispensing guideline prior to July 22, 2013, correct?

MR. BARNES: Objection; asked and answered.

A. The information in this guideline and other information was already available either at the pharmacy on the Internet portal that we have. It was information that was already available.

Q. So the answer is no, it was never in written form in a guideline from Giant Eagle prior to January of '13, right?

MR. BARNES: Objection; misstates his testimony.

A. If you're asking me if there is a document, a four-page document, that -- I guess -- I'm sorry. I'm trying to understand your question.

This is a guideline that was provided on 2013 that's information that was -- same information that the stores had, were using, and put in a guideline, in a document.

Q. This is Version 1, correct?

A. I'm not aware of another document that looks like -- if you're asking me -- like this --

Q. Okay.
A. -- before.
Q. Has this version ever been supplemented or edited at any time since July of 2013?
A. I am not -- I'm not aware of that, yes or no.
Q. If all of this information was already available somewhere else, can you explain to us why Giant Eagle took the time and spent the money to put together a formal controlled substance dispensing guideline if it was information that the pharmacist already had?
A. It's our attempt as a continuous improvement process and continually top of mind. As was mentioned in my testimony before, we continually talked to our pharmacists through education, through training, and this is an evolution of that continual keeping things top of mind and reminding and supporting our pharmacists, so ...
Q. Okay. So this was the first time that you had decided to create a top of mind document regarding dispensing guidelines for

controlled substance, July 2013, fair?

MR. BARNES: Object to form, misstates testimony.

A. This was a document that was put together of information that's already out there. You had mentioned about DEA information that was out there, Board of Pharmacy information. So someone decided and thought it would be a good idea to put some information together and to push it out to the stores. And that's what they did.

Q. And you don't know whether or not people have continued to update these guidelines over time as additional information has come out over the last eight years?

A. Well, I am sure they have. I just don't know what revisions -- I don't know what revisions, if any, have happened. There's certainly a lot of different training documents and other things that we have that go through regular revisions.

So if you're asking me if this is a static document, nothing is static in our -- again, it's a continual process of improvement.

Every week, every month, every year, there's things that we respond to and help support our pharmacy.

Q. Is there an updated version of this document? The only one I have is dated 7/22/13, and you're telling me it's continually being updated. I don't have an updated version.

Are you telling me there is one?

A. You asked me if I know if this has been revised, and I'm testifying that I don't know if it's been revised.

Q. You have no knowledge that it has been?

A. I have no knowledge that it has been or it has not been.

Q. You were asked some questions about the controlled substance manual, the one that I think George Chunderlik put together but was never actually rolled out to the pharmacies.

Do you remember that generally?

A. Was that the exhibit -- the second exhibit --

Q. It was.

A. Okay. Yes.

Q. Do you remember that generally?
A. Yes.
Q. Okay. And Mr. Barnes a few minutes ago asked you why, after Giant Eagle took the time and spent the money to put that together, wouldn't it have been rolled out to the stores. And you said something to the effect of because the stores already had the DEA pharmacy manual.
Do you remember that generally?
A. I said that the pharmacists have the DEA pharmacist manual and other information that they have. The DEA pharmacist manual is one of different pieces of information that they have. And a lot of what's covered in this document is really covering information that they already have, or it's already -- they already have access to or already did have access to or in another form already there.
Q. What is the other source of information -- and I'm telling you because I'm looking -- I've flipped through the DEA pharmacist manual, and I'll represent to you it's not in there. You can look, if you like.

But what is the other source of information that you're telling us the pharmacists had to see the extensive list of red flags that were outlined in Exhibit Number 2, the controlled substance manual?

MR. BARNES: Object to form.

A. So I don't have an exact date when this was created or how it was created. What I do know is the data, as you mentioned on the controlled substance guideline that we have, so the pharmacist have had access to that, right, since it was put together.

Pharmacists through continuing education, through the red flags videos we talked about earlier from the Ohio Board of Pharmacy -- there's different pieces of information covering red flags and top of mind of red flags that has been discussed with our pharmacists and certainly reinforced with our pharmacists.

Q. Is there any -- we'll talk about the video in just a second. But anything other than the dispensing guidelines, which we've already looked at, the video, any other

document, any other piece of paper or policy that you can point me to that the pharmacists had access to that had everything in it that that Exhibit Number 2, the controlled substance manual -- I don't want to go back through it again. You went over it in March. But all the different flags that it has for prescribers and for patients and for pharmacists and for stores. I think we counted over 40 red flags that that one listed.

What other document or piece of paper can you point me to that the pharmacist had access to that gave you the comfort to not publish Exhibit Number 2, the controlled substance manual?

A. So in regards to red flags, I know the discussion of red flags was covered extensively at the different meetings and the continuing education portions of our pharmacists that we had, whether it was at cluster meetings we had, whether it was at our annual meetings that we had. Certainly all of that was top of mind.

As far as a written document, this

is the written document that we have, that we had put together in 2013.

Q. Okay. You're talking about the guidelines?

A. Guidelines.

Q. Okay. So we have the four-page guidelines, and we have the video, and then we have meetings and training?

A. No. You're -- again, you're taking my testimony as there's little snippets or one thing. This was a continuous process of all the responsibility from the pharmacists, certainly the reinforcing of support for our pharmacists. And as the conversations around red flags and propagation of things -- or data points and things to watch out and changes in prescribing habits, all those things were continually discussed and shared and top of mind with our corporate teams, our pharmacy teams, our loss prevention teams.

So whether it was in a document or not, it was covered extensively throughout the years.

Q. Okay. So meetings, discussions,

continuing education, the controlled substance dispensing guidelines, the four-pager, and the video?

A. Loss prevention audits. When LP would go audit the stores, certainly these are conversations they had, the pharmacy district managers reinforcing expectations of practice. So, yes, all of that.

Q. And all of that is the reason that Giant Eagle kept the 40-page controlled substance manual sitting on the shelf that had all these red flags listed in there; it's because of all those meetings and discussions that Giant Eagle decided they didn't need to give the manual to the pharmacists?

A. No, that is not what I'm saying.

Up until my testimony in March, I had never seen this manual, Exhibit 1348. It was on one individual's hard drive and have no background on how it was created, the reason it was created, the reason -- I just -- I don't have any background on it.

Q. Okay. Well, you understand you're here today as the corporate representative of

Giant Eagle, correct?

A. Yes. Correct.

Q. Okay. Did you learn in your preparation that George Chunderlik was the one who was charged with drafting the controlled substance manual?

A. My understanding is he is not -- he did not draft this document.

Q. Okay. Did you happen to look at any of the portions of his deposition that he gave earlier and any of the performance evaluations where he talked about drafting or putting together the controlled substance manual?

A. Are you talking about the dispensing guideline or this manual?

Q. No, the manual. He did both of them.

A. My understanding in talking to George is this is not a manual that he created --

Q. Okay.

A. -- speaking with him.

Q. And as the corporate

representative of Giant Eagle, you don't have any information that you can provide for why Giant Eagle spent the time, money, and effort to put that 40-plus page controlled substance manual together that went through 30, 40 red flags and then didn't give it to anybody? You don't know why that is?

MR. BARNES: Object; misstates the record.

A. I can tell you my understanding in talking with George, that there was a pharmacist that was helping out in the training department that put this particular document together. And from there, whatever the discussion was at the time, et cetera, that it was never effectuated. So past that, I can't -- I can't speculate on the reasons why it wasn't used or not.

Q. So you know you had it. You know it was put together. And you know it wasn't used.

Is that all fair?

MR. BARNES: Object to form.

A. I know that it exists and it was worked on by an individual pharmacist. Past

that, correct, I don't know anything else about it.

Q. Well, you know it exists. You know it was worked on. And you know it wasn't shared with the pharmacists at Giant Eagle stores.

Correct?

A. I know that it was never effectuated or distributed to our pharmacists, yes.

Q. You talked a little bit about Rick Shaheen in the loss prevention department and the role that they played, and you made some comments along the lines of that because you had -- I think you called it a robust loss prevention department, that that would help prevent diversion.

Do you remember that generally?

A. Yes.

Q. Okay. I want to look at P-HBC-1419, which is going to be tab 16 in your binder.

MR. BARNES: Jeff, was this a document that was previously provided?

MR. GADDY: Yeah, everything that I've used was sent -- I made my list from last time's list.

MR. BARNES: Your list from what list? I'm sorry. I didn't hear that.

MR. GADDY: I made my list for today from the list of what Peter sent you in March.

MR. KOBRIN: Exhibit 1614, P-HBC --

MR. GADDY: 1419.

MR. KOBRIN: Thank you.

THE WITNESS: And, Mr. Gaddy, I'm sorry. Which tab in your binder?

MR. GADDY: 16.

THE WITNESS: Thank you.

MR. KOBRIN: This is not -- this is not in my box from the last time. 1419 is not there, just like the first two that you used this morning are not there.

I have 1404 -- P-HBC-1404, and then it goes to PODWAG. That's one set. You guys sent two sets.

BY MR. GADDY:

Q. Mr. Tsipakis, are you -- did you find it?

MR. BARNES: Hold on, Jeff. I'm not going to permit questioning if this wasn't previously provided.

MR. KOBRIN: I don't --

MR. GADDY: You're looking at it.

MR. KOBRIN: I go from P-HBC-1387 TO P-HBC-5017. I don't know if they're not in order. I'm willing to flip through and look for it and continue to look for it, but it's not in my set of documents which were retained from the first half of the deposition.

MR. GADDY: That's fine, Josh. Bob's got a binder in front of him with the document in it.

MR. KOBRIN: Which were sent in a completely untimely manner. They were sent weeks after the deposition opened and not even timely for this second half of the deposition.

I mean, proceed if you want to,

but I think it's completely excludable as being a complete violation of the protocol.

MR. GADDY: I appreciate your thoughts.

MR. BARNES: Well, wait a minute.

MR. KOBRIN: I don't think they're thoughts. I mean, Bob -- if Bob says is you're not going on about it, you're not going on about it. I think it's --

MR. GADDY: Well, then we'll come back and do it again. It's a document that Bob's got in front of him. This is the silliest thing I've ever heard.

(Cross-talk.)

(Court reporter admonishment.)

MR. BARNES: Jeff, hold on. The only reason we're here for a 45-minute follow up was Peter was so upset about not getting documents in the -- pursuant to the protocol, and so we fought it out with Special Master Cohen, and he said you get 45 minutes, but that wasn't the 45 minutes to redo your exhibits. It

was 45 minutes to go over the documents that were produced. This is not a second bite at the apple.

MR. GADDY: And I don't think it is, Bob. I told you I made my list from what he sent last time. I can't help it that Josh doesn't have his stuff in order.

(Cross-talk.)

(Court reporter admonishment.)

I sent you a cull-down list to make this easier for everybody. And why y'all are trying to make it more difficult, I can't fathom.

If you want to object about it and you want to raise this later if this ever tries to get used, you're more than welcome to.

MR. BARNES: Why don't we talk to the special master, Jeff.

(Cross-talk.)

(Court reporter admonishment.)

MR. GADDY: Josh, stop interrupting.

If you want to make an objection and maintain your objection, you're more than welcome to do so.

The only reason I'm going to this document, Bob, is because of the questions you asked him on your redirect, so I would have pulled this out anyway new and used it even if it hadn't been sent before, even though it was.

But I really don't understand. You've made your record. It's preserved. I got a couple questions about it, and we'll move on and be done.

MR. BARNES: Well, Josh, just interpose your objection if you believe it wasn't previously produced, and we'll move to strike it as appropriate, because this is not -- especially after, Jeff, you and Peter, Peter especially, objected so vociferously about not following the protocol.

So we're going to insist that the protocol be followed for you just like

you insisted that we follow it.

So if this wasn't produced, we're going to move to strike it, and that's the objection.

MR. KOBRIN: I have a complete set of the documents from the prior deposition which we received. Actually, I have two complete sets which were received in two packages.

I've looked in both packages. This document and this file are not in either of the boxes that we received prior to the first half of the deposition.

MR. BARNES: And so, Jeff, why are you representing that this is from there? I'm a little bit confused. Why would you say that it was already previously sent if it wasn't previously sent?

MR. GADDY: What I did was I pulled a list that was purported to me as having everything that was sent the first time, and I went through that and

culled it down to about 17, 18 documents to try to make it easier for everybody.

Bob, I think you've got it sitting in front of you. So, again, I'm at a loss for what the prejudice is here.

Secondly, this is only coming up because of questions that you just asked him about Rick Shaheen and what he did. So I would have gone to the well and pulled this document out anyway.

MR. BARNES: Don't give me the stuff about it's in front of me. All 200 of our exhibits were in front of Peter the last time, and he threw a hissy fit about it wasn't received by noon the day before, so ...

MR. GADDY: Well, that's because there was a ruling that we were supposed to see what the deponent was relying on in preparation for his deposition 24 hours in advance.

MR. BARNES: Right. And if this is brand new, that's our --

(Cross-talk.)

(Court reporter admonishment.)

MR. GADDY: So that we could look at them to ask our -- to know what to ask the witness questions about.

MR. KOBRIN: You had your time. This is a form over substance situation. You're claiming substance now and we're claiming form. You previously claimed form and we claimed substance.

Peter admitted he went through all the documents before. You still got your additional 45 minutes.

MR. GADDY: Look, guys, we've been here for four and a half hours for a 45-minute depo. Can I please just ask him five questions about this? You've made your record. Can we all just move on? I promise Jim would be a lot happier if we can just go ahead and get this over with. He has no interest in listening to you arguing about this.

MR. BARNES: What we're going to do is interpose the objection. You can ask him Jim the questions but over our

objection to the extent it wasn't previously produced pursuant to the protocol which you guys insisted be followed meticulously.

So that's the objection to your tab 16, but go ahead and ask some questions, but we are going to move to strike your use of any exhibit and your elicitation of any testimony for documents you did not previously provide.

BY MR. GADDY:

Q. Mr. Tsipakis, do you have tab 16 open?

A. Yes.

Q. I want to start at the bottom of the page and do this chronologically.

Do you see it's an e-mail from May 5, 2016?

A. Yes.

Q. And, again, we're asking -- I'm showing you this document in context to some of the responses that you gave to Mr. Barnes' questioning regarding Rick Shaheen and the loss

prevention department and how they played a role in diversion prevention when it came to Giant Eagle pharmacies, but you see this is another HBC suspicious purchasing report.

Do you see that?

A. Yes.

Q. And it says, "One pharmacy exceeding the threshold"?

A. Yes.

Q. And if we go back up to the next e-mail, it says, "George" -- and this is from Jason Mullen. It says, "George, do you want me to look into 6512's numbers for buprenorphine? I think they're having similar prescriber issues that was hitting the Lancaster store."

Do you see that?

A. Yes.

Q. It goes to say, "This is the fourth straight month that that store has blown through their threshold rather early in the month, although the threshold may be too low."

Do you see that?

A. Yes.

Q. Okay.

MR. KOBRIN: Object to form.

Q. Now, let's go up to the top e-mail, Mr. Tsipakis.

A. Yeah. I'm just reading the -- okay.

Q. You see we've got another follow up here from Jason Mullen to Mr. Chunderlik?

A. I'm sorry. The top of the page?

Q. Yes, sir.

A. I'm just going to read it one second. I see it. I'm reading it.

Q. We can read it together.

A. Okay.

Q. It says, "I'm still going through the data, but I wanted to give you a heads up there were a couple of flags."

Do you see that?

A. Yes.

Q. It says, "They seem to be getting a lot of the scripts from the health and wellness center. This is the same place that is hitting a lot of other Columbus stores, including Lancaster, that Rick Shaheen went to the DEA about."

Do you see that?

A. Yes.

Q. So what happened in this situation was that Rick Shaheen with Giant Eagle loss prevention had identified a problem prescriber or prescribers and had actually contacted the DEA about them.

Do you gather that?

A. From what I read there, yes.

Q. But despite the fact that he had done that, other stores within the Giant Eagle chain were still filling a lot of scripts from those same prescribers.

Do you see that?

A. Whether they were filled, it says here "hitting a lot of other Columbus stores." So from what I'm reading here, these prescriptions were showing up at other of our stores.

Q. Okay. So even though loss prevention had gone to the DEA complaining about a prescriber or prescribers, these scripts continued to make their way into Giant Eagle stores and to the extent that this particular

store blew through their threshold for the fourth straight month, correct?

A. So the store -- again, not having any other data or any other data points, I think if you recall in the testimony you and I had a few years ago, the threshold -- the thresholds that are set, there are certain stores that could get caught in that threshold where they were too low.

And this is an example of perhaps a store that they're -- based on the chain level, this is the threshold that's set, a particular store based on their volume. It may not be appropriate for that particular store and they hit the threshold. And that's the conversation I gathered that was done in this e-mail string.

As far as the Rick Shaheen to the DEA, this is not uncommon for us to talk to the DEA about -- which is part of the collaboration of things we're seeing, things we're concerned about, things that we want to bring to their attention.

But at the end of the day, these

are lawful prescriptions coming from prescribers that are authorized to prescribe these particular medications. And, again, each of these prescriptions would have been cleared by a pharmacist in their discretion, in their due diligence.

Q. So I want to break that down into two pieces, Mr. Tsipakis.

The first you said is the threshold might have been too low because of the volume of this store, right?

A. I'm only implying that from what is written. I don't know.

Q. Sure. Sure. That's one possibility, right?

A. Uh-huh.

Q. I'm sorry. I didn't hear you.

A. Yes.

Q. Okay. And that's one of the problems with having a chain-wide threshold, right?

A. From a mathematical perspective, that is -- certainly that is something that can happen, yes.

Q. You're going to have some stores that maybe trip the threshold maybe more than they should because they're high volume stores, and then you're going to have other thresholds that are maybe never going to trip the threshold because they're such low volume stores; is that fair?

A. I think it depends on where you set the thresholds. If you set the thresholds for the lowest common denominator, then other stores -- again, it's a mathematical equation how that works.

But in theory, you could have stores on either side of that, but in our case, it's the more conservative, using the smaller number, so I think it would be stores with higher volumes hitting the net more often than the other way around.

Q. Well, what you've told us is Giant Eagle uses a chain-wide average, right?

A. Correct.

Q. Okay. And, again, mathematical problems, some stores are going to flip -- are going to pop more easily than others are just

because of the populations that they service, correct?

A. The prescription mix, correct. Yes.

Q. And that's one of the flaws with having a chain-wide average instead of a store-specific average, correct?

MR. BARNES: Object to form.

A. This is why we don't just rely on a threshold report or just thresholds. This is one tool of many tools as we've testified -- as we've gone through today in testimony and other testimony, this is one -- one tool. And, again, a tool that's not required by a threshold that's not a required tool by the DEA, but one certainly from a recommendation or at least a good practice we implemented and continued to improve upon it.

Q. Okay. Well, it's one that the DEA actually advised you to implement, correct?

A. Yes. As it was testified earlier, that was a suggestion, not a requirement. A suggestion. We took that internally. We talked to the stakeholders, thought that was a good

idea, and put it into practice.

Q. Now, before I get off track, I said I wanted to break this into two parts, and we covered the threshold part.

The second part is that -- relates to Rick Shaheen and his conversation with the DEA. So I want to come back to that, okay?

A. Okay.

Q. So Mr. Shaheen had had conversations with the DEA about this prescriber or prescribers, but despite the fact that Giant Eagle loss prevention had notified -- or excuse me -- had identified an issue with the prescriber or prescribers, this particular store and other stores throughout Columbus continued to receive and fill prescription from those individuals, correct?

MR. BARNES: Objection; misstates the document.

A. I don't understand how you're linking the two together. As far as if you're asking did we continue to receive prescriptions from this prescriber, yes, we did, as did every other pharmacy, certainly, I'm sure in the area.

Q. But would you agree with me that if your loss prevention department has developed such serious concerns about a prescriber or prescribers that they've decided to go to the DEA about them, that maybe that's information that should be passed along to all the pharmacists in the field so that they can evaluate that information as part of their due diligence in making the determination about whether or not to fill a prescription from that prescriber?

A. I have no information that says he did or did not pass that information along or what was given or what wasn't. I'm only reading with you this e-mail string.

Q. I hear you, and that will be my next question. But my first question is, don't you think he should have or Giant Eagle should have communicated that information to the pharmacists that, "Hey, our loss prevention department has determined that this prescriber or these prescribers at the health and wellness center are so concerning that we went to the DEA about them."

Don't you believe that that information should be communicated to the Giant Eagle pharmacists in the field so that they can have that as an arrow in their quiver when they're making a determination about whether or not to fill a prescription?

MR. BARNES: Object to form.

A. Again, whether that information was or was not communicated, I don't have -- I can't answer that. But from experiences that I have seen in how Rick Shaheen and our loss prevention department and how our corporate department is set up and works, I most assuredly think that information was considered and disseminated in whatever fashion that it was. I have no reason to believe it wouldn't be.

MR. GADDY: Okay. Well, I'll move to strike your speculation.

BY MR. GADDY:

Q. But maybe you just answered my first question towards the end there by implication.

But you'll agree that that information should have been passed on to

Giant Eagle pharmacists, right?

MR. BARNES: Object to form.

A. You had asked me if that's information -- again, I'm going back to the question you asked me about Rick Shaheen and the DEA, and I wasn't privy to the conversation between Rick Shaheen and the DEA and what information he did or didn't share.

Certainly information around this instance and the stores that are involved, I most assuredly believe that the store and the PDLs and the loss prevention folks involved with Store 6512 would have had conversation.

MR. GADDY: Okay. Well, object and move to strike.

BY MR. GADDY:

Q. You're guessing, Mr. Tsipakis.

My question -- I'm going to ask two questions. The first is going to be whether or not it should have been communicated, and the second was whether or not it was.

And you've already told me you don't know if it was or not. But I'm still trying to get an answer to my first question.

Should this information, should it have been communicated to the Giant Eagle pharmacists that Giant Eagle loss prevention had made a determination that there were concerns about these prescribers, that they went to the DEA. Should that information have been sent to the Giant Eagle pharmacists, yes or no?

MR. BARNES: Objection; asked and answered multiple times.

MR. GADDY: But not answered yet. Been asked, but not answered.

BY MR. GADDY:

Q. Should that information have been provided to the Giant Eagle pharmacists?

MR. BARNES: You don't like the answer, so you keep hounding him with the same question over and over and over again.

One more time, Mr. Tsipakis.

A. So information, certainly data points as described here, information again on this particular topic, what was shared or wasn't shared or would it be helpful, it's a red flag. It's a data point.

But, again, each pharmacist individually needs to use their judgment and the information that they have whether to fill or not fill a prescription.

And, again, these prescriptions that are coming in are coming from a licensed authorized individual to prescribe medication.

If the DEA had a concern, an imminent threat to the community and to the counties involved, they would have pulled this person's DEA license.

MR. GADDY: Move to strike as nonresponsive.

BY MR. GADDY:

Q. Should this information have been provided to the pharmacists?

MR. BARNES: I think this is about the fifth time you've asked him the same question.

MR. GADDY: He hasn't answered it yet, Bob. He's telling me that it might or it might not have been, but he thinks --

MR. BARNES: You don't like the

answer.

MR. GADDY: I'm asking should it have been provided.

MR. BARNES: Let's move on. Let's move on. You've asked him five times.

MR. GADDY: No, I'm not moving on until I get an answer.

BY MR. GADDY:

Q. Mr. Tsipakis, should this information have been provided to the pharmacists?

MR. BARNES: Objection; asked and answered at least five times.

A. Without having been there and understanding what the conversations were, you're asking me to speculate whether this information would have been helpful or not to other pharmacies. The same speculation you just asked me about is the same thing you're asking me to do.

I wasn't there. I wasn't part of that conversation. I'm only reading an e-mail conversation in a chain.

Q. So your answer is, you don't have

enough information to tell us whether or not the fact that Rick Shaheen had gone to the DEA about this prescriber or prescribers should have been communicated to the pharmacists; is that fair?

MR. BARNES: Object to form, misstates the testimony.

A. What I'm saying is you're asking me if this was data useful or not, and without having the full -- I don't know. I don't know if it would have been helpful or not.

Q. Okay. Thank you. You don't know.

Do you know definitively, not you think or you guessed, but do you know whether or not this information was given to the pharmacists?

MR. BARNES: Object to form.

A. I do not.

Q. Thank you.

Before we went down that trail, we were talking a little bit about the DEA looking at distribution centers. Mr. Barnes asked you about that, and you referenced that they'd made, I think you said, a suggestion about implementing a threshold program.

Do you recall that generally?

A. Yes.

Q. Okay. Did you review the deposition of Agent Colosimo that was taken in this case?

A. I did not.

Q. Okay. Were you aware -- because you provided some testimony about DEA said that Giant Eagle was in compliance or full compliance or some terms like that.

Were you aware that Agent Colosimo indicated that the DEA had expressed concerns regarding Giant Eagle's suspicious order monitoring program?

MR. BARNES: Object to form.

A. No, I'm not aware of that.

Q. Did you review any of the reports of the DEA inspections of HBC or Giant Eagle facilities in preparation for your testimony today?

A. I believe those I had reviewed in the first track, in the first -- from the HBC that --

Q. We didn't have them then, so -- we

got them after 2018. So we got them from the DEA at some point in time after 2018.

A. Okay.

Q. So you wouldn't have had them to review before that deposition.

A. What I did review is our version, right, the -- our inspection report is what I'm saying.

Q. Okay. Thanks. That's a good clarification.

You haven't reviewed any DEA-authored reports about inspections of the HBC or Giant Eagle distribution facility?

A. Correct.

Q. Okay. I want to ask a quick question about OARRS to follow up on some questioning that Mr. Barnes had.

At your deposition in March, when I read it, I got the impression that you were testifying that a pharmacist could go into OARRS and run a report on a doctor. And then today when you testified, I thought you made it pretty clear that a pharmacist could only run a report on a patient.

Do you agree that a pharmacist can only run a report on a patient within OARRS and that they cannot go into OARRS and pull a report on a doctor?

A. So -- thank you. Let me clarify.

So I believe that was in response to Mr. Mougey's questions about pattern prescribing or using OARRS.

From a pharmacy perspective, there's a very limited use case on how you can use OARRS. So by going in and putting a patient and a date of birth, I can get who the prescriptions -- who filled those prescriptions -- what pharmacy filled those prescriptions, the quantity of those prescriptions, and who the doctor that authorized those prescriptions.

So from a doctor information, that is what's available and that's what I would have -- that's what I meant. You can't run a doctor report showing me all the prescriptions by Dr. XYZ. That's not a functionality of OARRS or the ability of OARRS. It's an individualized inquiry or query based on a patient level

inquiry.

Q. Okay. So if a patient came into a Giant Eagle pharmacy and presented a prescription from Dr. Doe and the pharmacist at Giant Eagle wanted to do research on Dr. Doe, based on what you just told me, they cannot go into OARRS, type in Dr. Doe and get a list of every script Dr. Doe has filled; is that correct?

A. That is my understanding.

Q. Okay. And I think what you also told us last time is that that is something that a pharmacist could do within the dispensing system and get information just for their store for Dr. Doe; is that correct?

A. So I believe what you're referring to is the conversation around reports that are available at the store.

Q. Yes, sir.

A. The store can run a utilization report that shows what prescriptions they filled, what drugs they want to look at, which there is a prescriber report that they can run at store level, yes.

Q. Okay. And so at the store level, not the whole chain, but at the store level, a pharmacist could run a report for Dr. Doe and see all the prescriptions that he or she filled or had filled at that store, but not at all the other Giant Eagles, correct?

A. Correct. If they had something that they wanted to see broader, they could -- they would talk to their PDL, or they would talk to the compliance department. And I think a lot of the reports and the testimony we saw earlier today show examples of corporate running reports across the chain.

So if stores had a concern or a question, they would escalate that question, whether it would be to loss prevention, whether it would be to the compliance department, whether it would be to their PDL, and they would get assistance or someone to help them or walk them through whatever they needed.

Q. Okay. The last thing I want to ask you about relates to the volume issues that you talked about with Mr. Barnes towards the end of your testimony.

You said that the average volume is 2,300 scripts per week per store?

A. 23-, 2400 unequivocalized, yes.

Q. Okay. How many -- so if we were to -- so if we were to just take 2300, we could multiply that by 52 to get the average number of scripts per year per store; would that be fair?

A. Yes.

Q. Okay. So I did that and got about 120,000. Does that sound about right?

A. Sure. Yes. I didn't do the math, but I'm trusting your math.

Q. Well, I pulled my calculator on my phone with a calculator. I got 119,600, but I'll round it up to 120,000.

A. Okay.

Q. How many Giant Eagle stores are there?

A. Pharmacies?

Q. Yes, sir.

A. As of today, 215.

Q. So if we multiply the 120,000 scripts per year times the 215 stores, I get 25.8 million prescriptions filled.

Does that sound about right?

A. Yes.

Q. And that would be per year?

A. Correct.

Q. Okay. Is that fairly consistent if we keep going back in time the last couple of years, or is it going to go down by a substantial number?

A. I couldn't answer definitively. Certainly we've been growing -- or the years that I've been here personally and certainly we've grown year on year. I'd have to go back and look at what our -- I mean, I couldn't definitively tell you if it's materially different than that number or not. I can tell you firsthand in the last four years I've been here that it's pretty consistent.

Q. Okay.

MR. BARNES: Jeff, I'm going to just interpose an agreement. We had agreed that the witness would be presented on topics 1 through 7.

You're now getting into other topics that we had agreed would be

provided in writing, including performance metrics, pay, compensation, staffing, promise times, fill times. Is that what you're getting into? I don't understand what this questioning would be about, and it seems to be straying from the agreed topics.

MR. GADDY: I'm just following up directly on questions that you asked him, Bob.

MR. BARNES: Yeah, I didn't ask him about how many prescriptions the entire chain filled or anything like that.

So I'll see where it's going, but I think you're right on the line of going beyond the topics.

MR. GADDY: Okay.

BY MR. GADDY:

Q. Okay, Mr. Tsipakis. So we had about 25.8 million per year for Giant Eagle, and you said that roughly 9 percent of those are typically controlled substances?

A. To my knowledge, that's what I

believe, yes.

Q. Okay. And so I multiplied the 25.8 million times 9 percent and I got 2,322,000.

Does that sound about right for the number of controlled substances that Giant Eagle would have filled last year?

A. 25 million, yes.

Q. And, again, same answer that you just gave as far as how consistent that would have been going back the last couple of years, you've grown, so it would have been a little lower the last few years looking backwards?

A. I mean, I think the numbers are going to be less, because prescribing habits and opiate prescriptions and controlled prescriptions are down year on year. So depending on the class of drug that you're looking at, I expect it actually would be less year on year.

Q. Well, if they're less year on year, that means they'd be more as we went backwards, right?

A. Potentially, yes.

Q. Okay. So 2.3 million last year, maybe about that, maybe a little bit more, maybe a little bit less, depending, but ballpark-wise, you don't have an issue with the 2.3 million controlled substance prescriptions filled on an annual basis?

A. No. Again, assuming the numbers that I have looked at, the 10 percent controlled versus total, then that would line up.

Q. Okay. And on every one of those 2.3 million prescriptions for controlled substances every year, the pharmacist that fills those prescriptions has a corresponding obligation to do their due diligence and make sure that those prescriptions should actually be filled, correct?

A. Yes.

Q. And they have an obligation to be on the lookout for red flags and to conduct their due diligence to dispel any and all red flags before they fill those prescriptions, right?

MR. BARNES: Object to form.

Object to form.

A. It's not only on controlled substances. I mean, all prescriptions. But, yes, the corresponding responsibility is on the controlled substances.

Q. Yeah. And they have an obligation to look out for the red flags and dispel any and all red flags before they make a decision to fill those prescriptions, correct?

MR. BARNES: Object to form.

A. Correct, in their professional -- using their professional judgment and training and patient information, yes, all of that.

MR. GADDY: Okay. Thank you, Mr. Tsipakis. That's all I have for you.

MR. BARNES: I have a few follow-up questions, Mr. Tsipakis.

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FURTHER REDIRECT EXAMINATION

BY MR. BARNES:

Q. I think you told us earlier -- going backwards from what you just finished on, you told us earlier that the DEA has said about 20 percent controlled substance versus

non-controlled substance prescriptions is a normal operating pharmacy; is that correct?

MR. GADDY: Objection to form.

A. Yes, that is correct.

Q. So applying the DEA's math, Giant Eagle should have as an operating -- normal operating pharmacy filled about 5 million prescriptions; is that right?

MR. GADDY: Objection to form.

Q. For controlled substances last year using Jeff's math and the DEA?

MR. GADDY: Objection to form.

A. Yes.

Q. And instead, they're not only less -- they're less than half of that; is that right?

MR. GADDY: Form.

A. Yes.

Q. Now, when you just answered the question about corresponding obligation and red flags, am I correct that as far as you know, neither the DEA or the Ohio Board of Pharmacy has ever advised Giant Eagle that it had to follow any red flags at any time?

MR. GADDY: Objection to form.

A. That is correct.

Q. In the hundreds of inspections by the Ohio Board of Pharmacy and the multiple inspections by the DEA of the warehouses, did they ever at any time suggest or state that there were red flags that had to be followed by the pharmacists when filling prescriptions?

MR. GADDY: Form, asked and answered.

A. No.

Q. And we went through many examples today of Giant Eagle's corporate headquarters sharing information across the chain with pharmacies, including BOLOs and e-mails and looking at specific doctors.

Do you remember all those things we went through?

A. Yes, I do.

Q. Okay. So is it a fair statement that the Giant Eagle's pharmacy compliance department oversaw all the pharmacies and communicated regularly with all the pharmacies out in the field?

MR. GADDY: Objection to form.

A. Yes. In conjunction with the operations team and the loss prevention team, yes.

Q. Okay. With respect to OARRS, is it your testimony that OARRS precludes pharmacists to investigate doctors, to go into their database and say, "I just want to see what Dr. Smith has been up to in the last year. I want to see what prescriptions he's been authorizing for all of his patients."

You can't do that, can you?

A. That is not a functionality allowed for the pharmacist on our side of the OARRS platform.

Q. Right. But on the OARRS side of the platform, they can certainly see it and do it and, in fact, that's the function of OARRS, right, to analyze that data and to look for bad prescribers and bad patients and doctor shoppers and drug abusers? That's what they do with that data; am I correct?

A. Yes, that is my understanding.

Q. Now, when you say that -- you were

asked some questions about whether Rick Shaheen passed on information about a DEA -- contacting the DEA, was it to your understanding Rick Shaheen's normal practice and habit to communicate that type of information to other pharmacies when he had information about bad doctors or bad patients?

A. Yes.

MR. GADDY: Objection to form.

A. Absolutely.

Q. Now, you have experience yourself, Mr. Tsipakis, of undergoing State Board of Pharmacy inspections of pharmacies where you were a pharmacist?

A. Yes, I do.

Q. And have you had the experience from time to time of having information about a potentially bad doctor and communicating that to the board agent and being told what to do or not to do with that information?

MR. GADDY: Object to form.

Is this individual testimony, Bob, or 30(b)(6)?

MR. BARNES: It's 30(b)(6). It's

just following up on what you elicited.

MR. GADDY: All right. I'll object then.

A. I'm sorry, Mr. Barnes. Can you repeat the question for me, please?

Q. Yeah. I'll say it in a better way.

Do you have knowledge about board agents advising pharmacies to not stop filling prescriptions for doctors under investigation because that's -- the doctor was simply under investigation and hadn't been found guilty of anything?

MR. GADDY: Objection to form.

A. No, never.

Q. Okay. Do doctors in your experience, Mr. Tsipakis, who end up being convicted and having their license stripped away, do they still, nevertheless, have good patients who need good prescriptions filled?

MR. GADDY: Objection; form.

A. Yes. Absolutely.

Q. Do you recall you were asked questions about Giant Eagle's chain-wide

threshold system? Do you understand that that threshold system was looked at by the DEA after it was implemented and found to be in compliance with the SOM regulations?

MR. GADDY: Objection to form.

A. Yes, I am aware of that.

Q. In fact, are you aware that the DEA doesn't really provide much guidance, if any, about how to run a threshold system and what formulas to use because it's a facility-by-facility specific factor?

MR. GADDY: Object to form, scope.

A. Yes, that is correct. The DEA does not provide explicit guidance or suggestions on how to implement or what numbers to use or not. Correct.

Q. It's up to the facility to do it based upon what they feel they need to do; is that correct?

A. Yes, that is correct.

Q. And, to your knowledge, did the DEA ever advise Giant Eagle's warehouses that they're using the wrong formula or should use a different formula?

A. No, never.
Q. Were guidelines ever required by either the DEA or the Ohio Board of Pharmacy? Did you ever even need to have guidelines?
MR. GADDY: Objection; form.
A. No. They were never required or -- never required of us.
Q. So why even have them? Why even issue anything?
MR. GADDY: Objection; form, asked and answered.
A. Again, in the continuous process of keeping things combined, supporting our pharmacists information and using them as talking points for all of our continuing education, our meetings, et cetera, it was decided to put it together in a guideline.
Q. Okay. But that's not something required by the regulations or the statutes, as far as you know?
MR. GADDY: Objection; form.
A. No, it is not.
Q. Mr. Gaddy represented to you in some questioning that red flags are not in the

DEA manual. Do you remember him representing that to you?

A. He did say that, yes.

Q. And assuming that to be true, what is the significance of the fact that the DEA's own pharmacy manual doesn't require any red flags?

MR. GADDY: Objection to form, the scope.

A. Again, red flags -- red flags can be different. There is no list of explicit things you have to look out for. It's individualized based on patient and situation and prescription.

So certainly these are things for -- data points for pharmacists to use in their professional judgment and discretion on whether to fill or not fill a prescription.

But, again, there is no statute or requirement of here's a list of -- either for the Board of Pharmacy or DEA. It's more of a best practice or things to look for or things that are top of mind, a guideline or suggestion only.

Q. Right. So if the DEA had felt it was important enough for pharmacies and pharmacists to know about red flags, do you think they would have put it in their own pharmacist manual?

MR. GADDY: Objection to form. That's not what that is, but go ahead.

A. Yes, I do.

Q. The questions you were asked by Mr. Gaddy about the dispensing guidelines, specifically the documentation, these guidelines, under the documentation section, it says, "The pharmacist must document the steps they have taken to verify questionable prescriptions."

Do you know what a questionable prescription is?

A. Yes.

Q. What is it?

A. A questionable prescription is when a pharmacist has a concern about either legitimacy of a prescription or a dose on a prescription. I mean, there's many things on a questionable prescription on whether it should

be filled or not.

Q. All right. But if a pharmacist satisfies his concern, it's no longer a questionable prescription; is that correct?

A. Correct. They've cleared the prescription, yes.

Q. And, therefore, no need to document anything?

A. That's correct.

Q. Is it -- from a pharmacist's perspective, and specifically Giant Eagle's perspective, which is more important for Giant Eagle, that pharmacists do their due diligence or they document it because somebody some day might challenge their professional judgment?

MR. GADDY: Objection; form, scope.

A. For the pharmacist to use their due diligence to take care of the patients.

MR. BARNES: I've got nothing further.

MR. GADDY: I don't have any more questions for Mr. Tsipakis.

I did want to note that we looked into these documents, particularly the one that you were raising an issue with, and apparently that was one that you identified and provided to us late that was the subject of the redeposition.

So that document came from the e-mail that -- Josh, I assume it was you e-mailed over the night before the deposition. So that's where that one came from.

Mr. Tsipakis, I don't have any more questions for you.

MR. KOBRIN: Let me just put on the record real quick. Was that -- when you entered that document -- that's neither here nor there, because you've been -- within the guidelines, you wouldn't have been able to pull the document from the documents we disclosed to you, which we did disclose to you within a timely fashion and keeping the protocols, because you would have had to get the document to us in 48 hours

before the deposition, and we disclosed the documents to you the day before the deposition. So I don't know why that has any relevance.

Did you mark that as an exhibit or no?

MR. BARNES: I don't think he did.

MR. GADDY: Yeah, I meant to. Let's mark it. I don't know what number we're on, Bob.

MR. BARNES: Why don't you just mark it Exhibit 23, since that's what it already is, so let's have the record reflect that it's Exhibit 23.

MR. GADDY: I'm sorry?

MR. KOBRIN: It's Exhibit 23.

MR. GADDY: There already is a 23.

MR. KOBRIN: Yeah, I believe that's your exhibit.

MR. GADDY: Oh, the document that you used?

MR. KOBRIN: I think so. And I raise this now because that's the one that we're going to replace. So just so

you're on notice, we're going to replace that version of it with version that says "Confidential Protected Health Information" at the bottom, so we're going to request that you swap out any others, and we will send a version with CPHI to the court reporter.

MR. BARNES: Okay. We can go off the record.

MR. GADDY: Hold on. I'm still not following.

MR. KOBRIN: With a CPHI legend I'm going to ask the court reporter. We can do this off the record, but I do want the court reporter to know that I'll replace 23. When I send it to her, I will send her a version that has "Confidential Protected Health Information" at the bottom.

Okay. We're off.

THE VIDEOGRAPHER: Off the video record. Stand by. The time is 3:20 p.m. Off the record.

(Signature reserved.)

- - -

Thereupon, at 3:20 p.m., on Wednesday, May 5, 2021, the deposition was concluded.

- - -

CERTIFICATION

I, Carol A. Kirk, Registered Merit Reporter and Certified Shorthand Reporter, do hereby certify that prior to the commencement of the examination, JAMES TSIPAKIS was duly remotely sworn by me to testify to the truth, the whole truth, and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a verbatim transcript of the testimony as taken stenographically by me at the time, place, and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that I am neither a relative nor an employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Carol A Kirk

Carol A. Kirk, RMR, CSR
Notary Public
Dated: May 10, 2021

DEPOSITION ERRATA SHEET

Case Caption: National Prescription Opiate Litigation

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

_____
JAMES TSIPAKIS

SUBSCRIBED AND SWORN TO
before me this _____ day
of _____, A.D. 20___

_____
Notary Public

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JAMES TSIPAKIS

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JAMES TSIPAKIS